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5/21/02  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

: No. 1:CV-01-0084  
(Judge Caldwell)

v.

PAUL EVANKO, MARK  
CAMPBELL, THOMAS  
COURY, JOSEPH  
WESTCOTT, HAWTHORNE  
CONLEY

: CIVIL ACTION - LAW

: JURY TRIAL DEMANDED FILED  
HARRISBURG, PA

:

:

:

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MARY E. ANDREA, CLERK  
Per \_\_\_\_\_  
Deputy Clerk

MAY 20 2002

**EXHIBITS TO DEFENDANTS' BRIEF IN SUPPORT  
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
VOLUME 3**

---

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF PENNSYLVANIA

\* \* \* \* \*

DARRELL G. OBER, \*

Plaintiff \* Case No.

vs. \* 1 CV - 01 - 0084

PAUL EVANKO, MARK \* (JUDGE CALDWELL)

CAMPBELL, THOMAS \*

COURY, JOSEPH \*

WESCOTT, and \*

HAWTHORNE CONLEY, \*

Defendants \*

\* \* \* \* \*

VIDEOTAPED DEPOSITION OF

PAUL EVANKO

March 27, 2002

*ORIGINAL*

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1 A P P E A R A N C E S

2

3 DON A. BAILEY, ESQUIRE

4 4311 North 6th Street

5 Harrisburg, PA 17110

6 COUNSEL FOR PLAINTIFF

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1 A P P E A R A N C E S (C O N T 'D)

2

3 JOANNA REYNOLDS, ESQUIRE

4 Assistant Counsel

5 PA State Police

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7 Harrisburg, PA 17110

8 COUNSEL FOR DEFENDANTS

9

10 ALSO PRESENT: ANDREW J. OSTROWSKI,  
11 ESQUIRE

12 VIDEOGRAPHER FROM PR  
13 REPORTING

14 MICHAEL SOLOMON,  
15 VIDEOGRAPHER FROM  
16 SARGENT'S COURT  
17 REPORTING SERVICE, INC.

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| 1  | EXHIBIT PAGE                                       |
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| 3  | PAGE   |
| 4  | <u>NUMBER</u> <u>DESCRIPTION</u> <u>IDENTIFIED</u> |
| 5  | One            10/19/99 Letter to                  |
| 6  | Director from                                      |
| 7  | Captain Ober                29                     |
| 8  | Two            Commissioner's Notes        116     |
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| 10 | Four            3/25/92 document            - -    |
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1                   O B J E C T I O N   P A G E

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3                   A T T O R N E Y                   P A G E  
4                   Christie                               4 8 ,    1 4 3  
5                   Guido                                1 0 6 ,    2 3 9  
6                   Bailey                              1 1 6  
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1 P R O C E E D I N G S  
2 -----  
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3 VIDEOGRAPHER:

4 Mr. Evanko, would you  
5 please raise your right hand  
6 and state your name for the  
7 record?

8 MR. EVANKO:

9 Paul Evanko.

10 PAUL EVANKO, CALLED AND SWORN TO  
11 TESTIFY

12 VIDEOGRAPHER:

13 Thank you. Mr. Bailey,  
14 could we have a sound check  
15 around the room?

16 ATTORNEY BAILEY:

17 Yes. My name is Don  
18 Bailey. I represent Darrell  
19 G. Ober, who is the Plaintiff  
20 in this matter. My address is  
21 4311 North Second --- North  
22 Sixth Street, Harrisburg,  
23 Pennsylvania 17110. My phone  
24 number is (717) 221-9500.

25 ATTORNEY GUIDO:

9

ATTORNEY CHRISTIE:

6                             Barbara Christie, Chief  
7                             Counsel, Pennsylvania State  
8                             Police. My address is 1800  
9                             Elmerton Avenue, Harrisburg,  
10                          PA 17110. Office number is  
11                          (717) 783-5568.

ATTORNEY REYNOLDS:

13                   My name is Joanna  
14                   Reynolds. I'm an Assistant  
15                   Counsel with the state police.  
16                   I represent the Defendants.  
17                   And my address and phone  
18                   number are the same as Ms.  
19                   Christie's.

ATTORNEY BAILEY:

21 I know we have a  
22 stenographer here. If she  
23 could identify herself and  
24 then put a phone number down.  
25 I want to specify that I am

10

1                   not ordering a stenographic  
2                   copy; okay? But if that would  
3                   change, I'd need to be able to  
4                   get in touch with you.

5                   COURT REPORTER:

6                   Sure.

7                   ATTORNEY BAILEY:

8                   Could you identify  
9                   yourself for the record?

10                  COURT REPORTER:

11                  Jennifer Billstein from  
12                  Sargent's Court Reporting.  
13                  Their number is (215) 564-  
14                  9727.

15                  ATTORNEY BAILEY:

16                  Thank you, Jennifer,  
17                  very much. The witness has  
18                  been sworn?

19                  VIDEOGRAPHER:

20                  Yes, sir.

21                  EXAMINATION

22                  BY ATTORNEY BAILEY:

23                  Q.           Colonel, you have been through  
24                  a number of --- or at least sat  
25                  through a number of depositions in

11

1 this case; is that correct?

2 A. Yes, sir.

3 Q. Well, I'm going to dispense  
4 with wasting, you know, the time in  
5 going through all of the different  
6 preparatory things. Would that be  
7 acceptable?

8 MR. SOLOMON:

16 ATTORNEY GUIDO:

17                   He needs to put his  
18                   preliminary on the record  
19                   before.

20 MR. SOLOMON:

21 | Exactly.

22 ATTORNEY BAILEY:

I don't have any  
objection. I mean, it's our  
deposition, but you go right

12

1 ahead. You're recording by  
2 alternative means today?

3 ATTORNEY GUIDO:

4 Yes.

5 ATTORNEY BAILEY:

6 Under the rules. Okay.

7 That's fine. Go ahead.

8 MR. SOLOMON:

9 My name is Michael  
10 Solomon. I'm employed by  
11 Sargent's Court Reporting  
12 Service. Today's date is  
13 March 27th, 2002. The time is  
14 approximately 9:20 a.m. This  
15 deposition is being taken at  
16 Technology Center, Bureau of  
17 Tech Services, 2629 Market  
18 Place, Harrisburg,  
19 Pennsylvania 17110. The  
20 caption of this case is in the  
21 United States District Court  
22 for the Middle District of  
23 Pennsylvania. Darrell G.  
24 Ober, Plaintiff, versus Paul  
25 Evanko, Mark Campbell, Thomas

13

1                   Coury, Joseph Wescott,  
2                   Hawthorne Conley. Civil  
3                   action case number 1CV-010084.  
4                   The name of the witness is  
5                   Paul Evanko. Will the  
6                   attorneys present state your  
7                   names and the parties that you  
8                   represent?

9                   ATTORNEY GUIDO:

10                  Was that --- did we  
11                  capture that already?

12                  MR. SOLOMON:

13                  The court reporter may  
14                  now administer the oath.

15                  ATTORNEY GUIDO:

16                  I think we've got that,  
17                  so we're okay. Okay. Thank  
18                  you very much. Thank you, Mr.  
19                  Bailey.

20                  ATTORNEY BAILEY:

21                  Thank you, sir. Thank  
22                  you, Syndi.

23                  BY ATTORNEY BAILEY:

24                  Q.            Okay. Colonel, I'm going to  
25                  --- can I safely dispense with all

1 the preparatories? I think you've  
2 heard them enough times, you're  
3 probably sick of hearing them. Is  
4 that fair to say or do you want me to  
5 repeat them?

6 A. I do understand them.

7 Q. All right, sir. Have you been  
8 practicing for this deposition?

9 A. Not really.

10 Q. And doing any on-camera work  
11 or techniques and that sort of thing?

12 A. No, sir.

13 Q. Okay. Colonel, what is a  
14 Mason? Who are the Masons?

15 A. It is a fraternal charitable  
16 organization.

17 Q. Having had some experience  
18 with them myself, they do some  
19 tremendously good and positive work  
20 out there; don't they?

21 ATTORNEY GUIDO:

22 Just one moment. I'd  
23 like to add that we're  
24 reserving all objections other  
25 than form of the question.

1                   ATTORNEY BAILEY:

2                   Sure.

3                   BY ATTORNEY BAILEY:

4                   Q.         I mean, they do some very good  
5                   and positive things out there; right?

6                   A.         Yes, sir.

7                   Q.         Okay. Do you know a guy by  
8                   the name of, I think it's Oaks  
9                   (phonetic), Joe Oaks?

10                  A.         No, I do not.

11                  Q.         John Oaks?

12                  A.         No, I do not.

13                  Q.         Never heard of anybody by that  
14                  name?

15                  A.         No, sir.

16                  Q.         Do you know who PNC Bank is?

17                  A.         I know that there's a PNC  
18                  Bank.

19                  Q.         Did you ever activate state  
20                  police cert teams, both the west and  
21                  the east, to transfer money for them?

22                  A.         For the Masons for PNC.

23                  Q.         For PNC?

24                  A.         Yes, several years ago I did  
25                  authorize and escort a large sum of

1 money for PNC.

2 Q. How much money?

3 A. It was in the vicinity of five  
4 to six million dollars in negotiable  
5 estimates.

6 Q. And where was that --- did the  
7 Governor approve that?

8 A. I approved it.

9 Q. Did you communicate with the  
10 Governor's Office about that?

11 A. I don't remember talking to  
12 anybody about it.

13 Q. Do you remember what you ---  
14 did you bill PNC for that?

15 A. Not that I recall.

16 Q. Well, let's see. How many  
17 people in the eastern cert team,  
18 Pennsylvania State Police Officers?

19 A. I'm not sure what the number  
20 is. I would guess 15 to 20.

21 Q. How about in the western team?

22 A. The same.

23 Q. Why did you do that?

24 A. We had a request from PNC Bank  
25 to assist in the security of that

1 transport of that large money.

2 Q. Is it your testimony here  
3 today that that's a cert team  
4 mission? That's consistent with  
5 their mission?

6 A. I think it would be consistent  
7 with their mission, yes.

8 Q. You used a helicopter?

9 A. I am not sure.

10 Q. What route did you use? Was  
11 it along the Pennsylvania Turnpike?

12 A. I do not know.

13 Q. Do you know if Mr. Wescott  
14 played a role in that?

15 A. He probably coordinated that.

16 Q. Do you know what that cost  
17 taxpayers?

18 A. No, I do not.

19 Q. All right. I hope that you  
20 will believe me. I'm not trying to  
21 be facetious or argumentative when I  
22 ask this question. Do you know what  
23 a cup of coffee cost in Indiana  
24 County, Pennsylvania a couple of  
25 years ago?

1 A. No, I do not.

2 Q. Have you ever authorized  
3 swimming parties out of the academy  
4 pool or some swimming pool or  
5 swimming place you have around here?

6 A. No, I did not.

7 Q. Did your daughter ever have  
8 any people out there for any kind of  
9 events?

10 A. Not that I remember, no.

11 Q. State police lifeguards were  
12 never used at any events that have  
13 been held there, that you know of?

14 A. No, sir.

15 Q. Okay. I'm going to ask you a  
16 few questions about the academy and  
17 any knowledge or experience you may  
18 have with the academy; okay? Are you  
19 familiar with a trooper who came from  
20 Illinois who had some very severe  
21 background problems and who was  
22 allowed into or allowed to go to the  
23 academy or to become a Pennsylvania  
24 State policeman? I'm not sure of the  
25 name. I think it might be Evans.

19

1 I'm not certain. Do you have any  
2 knowledge of that?

3 A. I know that we had a case  
4 involving Trooper Evans. He had to  
5 be arrested.

6 Q. And do you know whether he had  
7 any prior, before he was arrested ---  
8 I don't have a great deal of  
9 knowledge of it, I must confess to  
10 you, sir, but was he arrested for  
11 abusing a female or abusing a woman,  
12 or at least accused of that?

13 A. We arrested and I think  
14 convicted him of that.

15 Q. How did he become a  
16 Pennsylvania State Policeman?

17 A. Probably went through the  
18 written examination, the oral  
19 interview, the physical fitness  
20 tests, et cetera, et cetera.

21 Q. Did he have any help along the  
22 way that you know of?

23 A. Not that I know of.

24 Q. Any assistance from you at  
25 all?

20

1 A. None from me.

2 Q. How about Mr. Coury, if you  
3 know?

4 A. I don't know of any assistance  
5 that he had.

6 Q. Okay. Thank you. Did you  
7 have that situation investigated?

8 A. I think we investigated and  
9 arrested him.

10 Q. Well, you investigated the  
11 allegations against him for  
12 mistreatment of the female citizen;  
13 am I correct?

14 A. I think we both did a BPR  
15 investigation and a criminal  
16 investigation.

17 Q. How did the BPR investigation,  
18 what did it yield about how he became  
19 a Pennsylvania State Police Officer?

20 A. I wouldn't know unless I  
21 looked at that.

22 Q. Have you ever looked at it?

23 A. I don't recall.

24 Q. Does your daughter have a  
25 riding instructor?

21

1 A. Yes, she's had a number of  
2 riding instructors.

3 Q. Do you know the names of any  
4 of them?

5 A. Beth McCann (phonetic) and her  
6 last name is Baker. Those were her  
7 two primary riding instructors.

8 Q. Is one of them a Pennsylvania  
9 State Trooper now?

10 A. No, sir.

11 Q. Did any of her riding  
12 instructors ever become Pennsylvania  
13 State Troopers?

14 A. No, sir.

15 Q. Have you ever ordered an  
16 entire class or group of applicants  
17 at the academy retested?

18 A. In what regard, sir?

19 Q. Colonel, I don't know, sir.  
20 Any regard that might please you.  
21 I've been impressed with the --- what  
22 your witnesses so far have told us  
23 about the powers of the colonel  
24 commissioner here. I don't know what  
25 your reasons would have been. I'm

1 going to try to find out. But did  
2 you ever order a group retested?

3 A. I do not recall ordering any  
4 group of applicants retested.

5 Q. Did you ever make a request  
6 that they be retested?

7 A. If we're talking about the  
8 allegations of unfairness and  
9 uniformity, the unfairness of the  
10 physical fitness testing, the  
11 complaint that's filed with us, if  
12 that's what we're talking about, I am  
13 aware of that and I took a complaint  
14 from an individual by the name of  
15 Colleen Young, sent the complaint to  
16 the Deputy Commissioner of  
17 Administration to consult with the  
18 Chief Counsel's Office and what to do  
19 with that complaint.

20 Q. Colleen Young?

21 A. Yes.

22 Q. Was she ever your daughter's  
23 --- a riding instructor for your  
24 daughter?

25 A. No, sir.

1 Q. Did you know her prior to this  
2 request?

3 A. Yes, I did.

4 Q. And how did you know her, sir?

5 A. She rode with my daughter.

6 Q. Do you recollect what her  
7 complaint was?

8 A. She was challenging the  
9 uniformity and fairness of the  
10 physical fitness testing of the  
11 department.

12 Q. Did you change the test or  
13 have the test altered in some way,  
14 either as to criteria or format?

15 A. I don't think so.

16 Q. So you did at least request  
17 that there be a retest or that  
18 somebody analyze the situation with  
19 an eye to at least considering that  
20 there be a retest; is that fair to  
21 say?

22 A. It's fair to say that I  
23 received the complaint and I  
24 forwarded it to the Deputy  
25 Commissioner of Administration to

24

1 consult with the Chief Counsel's  
2 Office and evaluate the complaint and  
3 do whatever was right.

4 Q. Colleen Young failed the test  
5 the first time; is that right?

6 A. I believe that she did.

7 Q. Who else failed it the first  
8 time?

9 A. I don't know.

10 Q. Well, did you ever have the  
11 matter looked into or, you know, to  
12 verify it or test it?

13 A. Other than to receive the  
14 complaint and send it to the Deputy  
15 Commissioner of Administration.

16 Q. Do you know whether any  
17 Pennsylvania Troopers ever came to  
18 your door or came to you over a hit  
19 and run incident and a potential DUI?

20 A. I don't know of any.

21 Q. You don't recall any?

22 A. That's correct.

23 Q. Colonel, do you know of anyone  
24 putting documents into or taking  
25 documents out of any of the files in

25

1       this matter, this case that we're  
2       dealing with here? Do you know of  
3       anyone doing that? Do you have any  
4       knowledge of anyone who --- any of  
5       your attorneys or any of your staff  
6       doing anything like that?

7       A.       Yes, I do.

8       Q.       And tell me about it, please.

9       A.       I understand that Major  
10      Merryman (phonetic), Director of the  
11      Bureau of Research and Development,  
12      removed files from this bureau and  
13      met with Captain Ober in a parking  
14      lot somewhere.

15      Q.       Okay. Aside from Major  
16      Merryman, is that the historic file?

17      A.       I think that's the state  
18      police record.

19      Q.       Well, what have you done to  
20      Major Merryman about that?

21      A.       I haven't done anything.

22      Q.       Well, are you going to punish  
23      him?

24      A.       I don't have any intention to.

25      Q.       Well, did he violate a

1 regulation?

2 A. I'm not sure that he did  
3 violate a regulation.

4 Q. Well, do you know of any other  
5 circumstances where that historic  
6 file was taken out of the --- and  
7 it's, I guess, you said removed? I  
8 mean, your words were removed a file.  
9 That's what I have as a quote here,  
10 removed files. Any other  
11 circumstances where that was removed,  
12 that files were removed?

13 A. And that's the only one that  
14 I know of.

15 Q. How about Captain Ober's  
16 personnel files? Do you have any  
17 knowledge of them, where they might  
18 be?

19 A. I would imagine that they're  
20 in the vault with all the rest of the  
21 personnel files.

22 Q. Well, sir, I assume that your  
23 attorneys have gone over a document  
24 request that we have made with you or  
25 at least made you aware of them. Do

1 you know where, and operating on that  
2 assumption, do you know where Mr.  
3 Ober's personnel files are?

4 A. Again, I would imagine that  
5 they're in the vault with the rest of  
6 the personnel files.

7 Q. Well, do you have a file on  
8 Captain Ober?

9 A. No, I do not.

10 Q. Ever had a file on Captain  
11 Ober?

12 A. No, I have not.

13 Q. And aside from the e-mail that  
14 you provided, you don't have any  
15 documents on Captain Ober; is that  
16 right?

17 A. That is correct.

18 Q. Well, why did you keep that e-  
19 mail?

20 A. It had to do overall with the  
21 reorganization, civilianization of  
22 the department and we kept a folder  
23 on those issues.

24 Q. All right. Well, is there a  
25 bureau personnel file then on Captain

28

1 Ober? Would there be a, like a  
2 bureau wherever he is, a personnel  
3 file with the bureau?

4 A. I think the bureaus do keep  
5 some type of folders on each of their  
6 members.

7 Q. And is there a personnel file  
8 somewhere else?

9 A. Not that I know of, no.

10 Q. Okay. Do you have a  
11 recollection of Captain Ober wanting  
12 to go to a School of Police Staff and  
13 Command, which was sent to the Bureau  
14 of Personnel on or about October  
15 19th, 1999, reference Special Order  
16 99-102 dated October 7, 1999?

17 A. No, I do not.

18 Q. Well, if I indicated to you  
19 that this document ---.

20 ATTORNEY GUIDO:

21 Can we have the  
22 document marked if it is going  
23 to be shown to the witness?

24 ATTORNEY BAILEY:

25 Sure. You can mark it.

1 A. Ann Alfono (phonetic) was the  
2 other instructor, riding instructor.

3 BY ATTORNEY BAILEY:

4 Q. Ann Alfono?

5 ATTORNEY GUIDO:

6 Exhibit One.

7 (Deposition Exhibit One  
8 marked for  
9 identification.)

10 ATTORNEY CHRISTIE:

11 Do you have a copy,  
12 Counsel, for ---?

13 ATTORNEY BAILEY:

14 You can have a dozen  
15 copies, because we really love  
16 you over here. We'd be happy  
17 to give you copies.

18 ATTORNEY CHRISTIE:

19 Like right now?

20 ATTORNEY BAILEY:

21 No, we don't have any  
22 copies right now.

23 ATTORNEY CHRISTIE:

24 All right. Then may we  
25 have an opportunity to review

30

1           this before the Commissioner  
2           goes ---.

3           ATTORNEY BAILEY:

4           As soon as I'm done, we  
5           can, yes. Yes, you can have  
6           an opportunity to review it,  
7           sure.

8           ATTORNEY CHRISTIE:

9           Thanks.

10          ATTORNEY BAILEY:

11          Well, that's all right.

12          BY ATTORNEY BAILEY:

13          Q.       Colonel, what would you do to  
14           somebody if they altered or took a  
15           document out of Mr. Ober's file in  
16           order to affect the course of this  
17           litigation? What action would you  
18           take?

19          A.       Again, what's the question? /

20          Q.       Well, do you know whether Mr.  
21           Coury approved or disapproved that  
22           action?

23          A.       I don't know.

24          Q.       Do you know if Mr. Coury  
25           disapproved that action because he

31

1 indicated to Mr. Ober that it was ---  
2 came to the bureau too late?

3 A. I don't have any idea.

4 Q. Do you know whether that  
5 document as it existed in Captain  
6 Ober's file which I will represent to  
7 you, sir, he recently checked, had a  
8 date notation on the bottom of it,  
9 and that that document has been ---  
10 was in his file, and that that  
11 document has been removed from his  
12 file?

13 A. I have no idea.

14 Q. I would like to --- I'm  
15 representing to you that there was a  
16 document in that file with a date  
17 notation at the very bottom of that  
18 very document that said BTS personnel  
19 10/20/99. Do you know who BTS is?

20 A. They're probably the  
21 abbreviation for Bureau of Technology  
22 Services.

23 Q. Okay.

24 ATTORNEY BAILEY:

25 I know it wasn't

1                   provided during discovery.

2                   BY ATTORNEY BAILEY:

3       Q.       I would ask, how far would

4       Captain Ober's file be from here?

5       Where would it be from here?

6       A.       Headquarters.

7       Q.       Headquarters? Oh, geez.

8                   ATTORNEY BAILEY:

9                   I would like to

10          suspend. I'd like Captain

11          Ober to go over there. Maybe

12          Mr. Brown can go with him,

13          since he's the investigator in

14          this case. And I'd like that

15          file to be looked at to see

16          where that document is and if

17          it has a date proof on the

18          bottom.

19                   ATTORNEY GUIDO:

20          We're not going to do

21          that in the middle of the

22          deposition.

23                   ATTORNEY BAILEY:

24          You're going to refuse

25          to do that?

1                   ATTORNEY GUIDO:

2                   Yes.

3                   ATTORNEY CHRISTIE:

4                   Counsel, you had  
5                   opportunity to view the  
6                   Plaintiff's file on March the  
7                   8th as among the number of  
8                   things that were produced for  
9                   your inspection at  
10                  headquarters.

11                  ATTORNEY BAILEY:

12                  Well, I'm representing  
13                  for the record that that  
14                  document was not in that file,  
15                  that it was taken out of that  
16                  file, and it is still out of  
17                  that file. And that I'm going  
18                  to repeat accusations I've  
19                  made in the past that someone  
20                  has intentionally altered and  
21                  interfered with the file.

22                  ATTORNEY CHRISTIE:

23                  Well, Counsel, I find  
24                  it curious --- oh, I'm sorry.  
25                  Finish. I'm sorry I

1                   interrupted you.

2                   ATTORNEY BAILEY:

3                   And we checked that  
4                   file as of this morning. And  
5                   we think that somebody has  
6                   taken documents out of the  
7                   file. I don't see how we  
8                   inconvenience anybody here. I  
9                   can understand your being  
10                  afraid maybe, and I don't know  
11                  why ---.

12                  ATTORNEY GUIDO:

13                  We are not afraid, sir,  
14                  but we're not interrupting  
15                  this deposition for that  
16                  purpose. We provided you with  
17                  what we provided you. You  
18                  know, it will inconvenience  
19                  people because this is the day  
20                  for the deposition. Colonel  
21                  Evanko's cleared his schedule  
22                  for it, and if we take time to  
23                  go to the headquarters it's  
24                  going to delay the deposition  
25                  and we're just not going to do

1 it .

2 ATTORNEY BAILEY:

3 Okay . Well , we 're  
4 going to have a lunch break .  
5 I want to have Mr . Ober go  
6 over and look at his file over  
7 the lunch break , Colonel .

8 ATTORNEY GUIDO:

9 He can do whatever he  
10 likes during lunch .

11 BY ATTORNEY BAILEY:

12 Q . I want to represent - - - .

13 ATTORNEY BAILEY:

14 Please , ma 'am , please .  
15 Do you have an objection to  
16 place on the record ?

17 ATTORNEY GUIDO:

18 I said to your request ,  
19 yes , he can do what he likes  
20 during lunch if that 's your  
21 representation .

22 ATTORNEY BAILEY:

23 Well , it 's - - - .

24 ATTORNEY GUIDO:

25 But what I 'm saying is

36

1 let's have the questions of  
2 the Colonel.

3 ATTORNEY BAILEY:

4 Let the record show  
5 that I deeply appreciate  
6 Counsel's permission to do  
7 what we want during lunch  
8 break.

9 BY ATTORNEY BAILEY:

10 Q. But what I was going to ask  
11 you, Colonel, is would you mind if  
12 --- do you have any objection to  
13 directing Mr. Brown to go with him?

14 A. That would be up to my  
15 Counsel.

16 Q. Okay. So your Counsel direct  
17 Mr. Brown.

18 ATTORNEY BAILEY:

Well, Counsel, I'll  
make the request and you can  
consider it that Mr. Brown go  
along to look at that file  
over there today.

24 | BY ATTORNEY BAILEY:

25 Q. And I'm representing to you,

1 Colonel, that that file has been  
2 interfered with. But your testimony  
3 here today is that you have no  
4 knowledge of that; is that correct?

5 A. That is correct.

6 ATTORNEY CHRISTIE:

7 And might I just note  
8 also on the record that,  
9 Counsel, you were given an  
10 opportunity to review those  
11 items which were produced  
12 pursuant to the request for  
13 production of documents that  
14 you made on March the 8th, if  
15 I recall. You spent  
16 approximately, what five, six  
17 hours there to review, among  
18 other things, I'm sure this  
19 personnel file. And I do find  
20 it curious that there was no  
21 mention, in addition to your  
22 green ink mention, there was  
23 no mention whatsoever of this  
24 document or any other document  
25 being missing from the

1 Plaintiff's personnel file.

2 But you also, you had  
3 opportunity to copy those  
4 documents, including that in  
5 the personnel file. I might  
6 note also you appear to have a  
7 copy of that document here  
8 today, which is now marked  
9 Exhibit One.

10 ATTORNEY BAILEY:

11 Counsel, let me just  
12 provide just a little bit of a  
13 rejoinder. I can't copy what  
14 isn't given to me. That's my  
15 response to you, ma'am.

16 ATTORNEY CHRISTIE:

17 Well, I just note,  
18 Counsel, again, not to repeat,  
19 but you do appear to have a  
20 copy ---

21 ATTORNEY BAILEY:

22 I don't care ---.

23 ATTORNEY CHRISTIE:

24 --- of what you contend  
25 is missing from the

1 Plaintiff's file and certainly  
2 there was no such contention  
3 made on March the 8th during  
4 the time of your inspection of  
5 that material.

6 ATTORNEY BAILEY:

7 I don't think I have a  
8 duty to catch every little  
9 piece of whatever is going on  
10 around here on March the 8th,  
11 because there's some very  
12 strange things.

13 ATTORNEY GUIDO:

14 For all we know Captain  
15 Ober or yourself removed it  
16 from the file. Can we get on  
17 with the deposition.

18 ATTORNEY BAILEY:

19 No, no, ma'am. I'm  
20 sorry. You --- first of all,  
21 you were not there and I  
22 realize you investigated this  
23 case to begin with, but you  
24 had a representative there at  
25 all times and we didn't remove

1 anything from the file.

2 ATTORNEY GUIDO:

3 I didn't mean that.

4 You just said that Captain  
5 Ober has repeatedly gone and  
6 reviewed his personnel file.

7 I'm not talking about March  
8th necessarily with Captain  
9 Ober.

10 ATTORNEY BAILEY:

11 But you're not implying  
12 that Captain Ober removed  
13 something from the personnel  
14 file?

15 ATTORNEY GUIDO:

16 Sure. I'm implying he  
17 possibly did. I don't know.

18 ATTORNEY BAILEY:

19 Is he allowed to have  
20 --- he's allowed to copy his  
21 file. Are you implying that  
22 he took things from the file?

23 ATTORNEY GUIDO:

24 You're implying someone  
25 took things.

1                   ATTORNEY BAILEY:

2                   Yes, I am. Yes, I am.

3                   ATTORNEY GUIDO:

4                   What I am saying is  
5                   someone took them. For all we  
6                   know Captain Ober took them.

7                   ATTORNEY BAILEY:

8                   Well, for all you know,  
9                   we're going to find out about.  
10                  That is a key material issue  
11                  in this case. And it's a key  
12                  material allegation in the  
13                  case. So we'll have an  
14                  opportunity to review these  
15                  files. It may be there. I'll  
16                  be very curious to find out if  
17                  it is. But so far you're  
18                  refusing us an opportunity to  
19                  go right now and look at it  
20                  and I understand that you're  
21                  taking that position.

22                  BY ATTORNEY BAILEY:

23                  Q. Now, Colonel, let me change  
24                  gears just a little bit here to  
25                  something else. Just a second here.

42

1 I'm going to ask you about a series  
2 of things. I'm going to ask you  
3 about --- just go over a little bit  
4 about ---.

5 ATTORNEY CHRISTIE:

6 Excuse us, Counsel.

7 ATTORNEY GUIDO:

8 We're having a  
9 discussion about the document.  
10 The document's been handed to  
11 the court reporter. By the  
12 end of the day we'll make sure  
13 during a break we'll get a  
14 copy. Thank you.

15 BY ATTORNEY BAILEY:

16 Q. When did you first become  
17 aware that there had been an FBI  
18 investigation into the academy and  
19 the appointment of cadets?

20 A. May 12th, 1999.

21 Q. And how did you become aware  
22 of that?

23 A. Through Lieutenant Colonel  
24 Hikus (phonetic) and Captain Ober.

25 Q. And where were you when you

1       became aware of that?

2       A.       At the academy in Hershey.

3       Q.       And what was the event?

4       A.       It was a corporal promotion  
5             ceremony.

6       Q.       Now, who informed you?

7       A.       Lieutenant Colonel Hikus and  
8             Captain Ober.

9       Q.       And is that all? Only those  
10          two were present when they informed  
11          you?

12       A.       Yes, sir.

13       Q.       And what did they say to you?

14       A.       They initially asked if they  
15          could see me, because they had  
16          something they wanted to tell me. We  
17          then went into the Office of the  
18          Bureau of Training and Education, we  
19          sat down. Lieutenant Colonel Hikus  
20          began by saying that shortly after he  
21          was appointed to the position of  
22          Lieutenant Colonel, Deputy  
23          Commissioner of Staff, that Captain  
24          Ober had come to him and asked if he  
25          could speak with him and told him

1       that while he was acting director of  
2       the Bureau of Professional  
3       Responsibility in late September or  
4       early October an FBI agent from the  
5       Pittsburgh office called BPR and  
6       talked to him and told him that they  
7       were conducting a political  
8       corruption investigation and that  
9       part of that political corruption  
10      investigation involved high-ranking  
11      officials or individuals in the state  
12      police and/or the Governor's Office  
13      or both.

14      Q.        Okay. And what was your  
15      reaction?

16      A.        I listened and let them  
17      continue.

18      Q.        You listened and let them  
19      continue. Well, did you say anything  
20      at some point?

21      A.        At some point I became very  
22      angry at what I was listening to and  
23      said that the SAC in Pittsburgh is a  
24      friend of mine and I ought to pick up  
25      the phone and call him. In fact,

1 Director Freeh is a friend of mine.  
2 And I picked up the phone and called  
3 him and if they were conducting a  
4 political corruption investigation  
5 into the higher ranks of the state  
6 police that SAC ought to be  
7 transferred and he hadn't told me.

8 Q. Why should the SAC be  
9 transferred if he's conducting an  
10 investigation into possibly you?

11 A. Because I didn't even think  
12 that I was being included in that  
13 when they originally briefed me. It  
14 wasn't until the day after May 12th,  
15 the day after that, that Lieutenant  
16 Colonel Hikus told me that the quote,  
17 term, end quote, colonel was used.  
18 That was May 13th.

19 Q. Do you trust your officers to  
20 conduct themselves in accordance with  
21 good ethical principles in an  
22 investigation?

23 A. That's my expectation.

24 Q. Were you concerned that if you  
25 weren't told that that might be

1 embarrassing to you?

2 A. Rephrase it, please.

3 Q. Were you concerned that you  
4 weren't --- you not being told that  
5 that could be embarrassing to you?

6 A. That was one of my concerns,  
7 yes.

8 Q. Well, what were your other  
9 concerns?

10 A. I had a number of other  
11 concerns. Lieutenant Colonel Hikus  
12 was telling me that shortly after he  
13 was appointed that Captain Ober comes  
14 to him. I found out that's October  
15 5th. And the very first thing that  
16 the newly appointed lieutenant  
17 colonel was told by me was that if  
18 you have incidents that significantly  
19 affect the department or significant  
20 initiatives, anything significant  
21 about the department, to come to me  
22 and keep me informed and up to date  
23 of things. That's the very first  
24 thing that I told the lieutenant  
25 colonel. As soon as he started

1 talking I said, didn't we have a  
2 conversation that very first day to  
3 keep me informed.

4 I was also concerned that  
5 during their briefing to me they told  
6 me that they had received this  
7 information from the FBI that it was  
8 closed and unfounded two weeks  
9 earlier. And I'm thinking, two weeks  
10 earlier, why wasn't I told two weeks  
11 earlier? I was also concerned  
12 because the lieutenant colonel had  
13 been told again on those first couple  
14 days of his command, if you're going  
15 to be involved in the other deputy  
16 commissioners' commands to make sure  
17 that you talk to them, don't do  
18 anything unilaterally. He said,  
19 that's my expectation from them and  
20 you as well. And it didn't seem  
21 reasonable to me what I was hearing.  
22 I said, how can the FBI conduct it  
23 themselves, allegedly conducting this  
24 inquiry?

25 Q. Well, so your --- the primary

1 reason for your upset was that  
2 somebody hadn't told you earlier?

3 ATTORNEY CHRISTIE:

4 I object. I don't  
5 think that's what the  
6 Commissioner said. What I'm  
7 objecting to is to form.

8 BY ATTORNEY BAILEY:

9 Q. Well, let me ask you. Is that  
10 what you're saying?

11 A. That was one of four reasons.

12 Q. Okay. One of four reasons.  
13 So was that the major reason, that  
14 you hadn't been informed early  
15 enough?

16 A. That was one of the major  
17 reasons, yes.

18 Q. Okay. Now, whose duty was it  
19 to inform you?

20 A. Lieutenant Colonel Hikus'.

21 Q. That's what I took from what  
22 you said. The fact Colonel Hikus had  
23 a duty to inform you. Did Lieutenant  
24 Colonel Hikus tell you that he had  
25 ordered --- we're going to deal later

1 with the issue of Captain Ober's  
2 going to Lieutenant Colonel Hikus;  
3 okay? I don't want to cloud this  
4 question with that consideration, so  
5 I want to be very specific with this.  
6 Did Lieutenant Colonel Hikus indicate  
7 to you that he had told or ordered  
8 Captain Ober not to reveal what  
9 Captain Ober knew?

10 A. Yes, he did.

11 Q. Okay. Now, Colonel, is it  
12 fair to say that Lieutenant Colonel  
13 Hikus told you that on the 12th, the  
14 12th or the 13th? And I want to sort  
15 this out, because I understand there  
16 were more than one conversation. I  
17 want to make sure we get a real good  
18 fact picture here. So if you'd think  
19 for just a moment and answer this  
20 question. Do you recollect whether  
21 Mr. Hikus told you on May 12th  
22 initially while Captain Ober was  
23 present that he had ordered Captain  
24 Ober to keep this information close  
25 to the vest and report only to him?

1 A. Yes, he did.

2 Q. Okay.

3 Now, did you respond to Lieutenant  
4 Colonel Hikus at the point that he  
5 told you that, and if so what did you  
6 say?

7 A. I just listened.

8 Q. You just listened at that  
9 point?

10 A. Yes, sir.

11 Q. Now, okay, right now we're  
12 still talking about May 12th; okay?

13 A. I understand.

14 Q. All right, sir. Now, Mr. ---  
15 did Captain Ober speak at that point?

16 A. He spoke at some point during  
17 this briefing.

18 Q. Okay. Can you tell us, will  
19 you share with us please what Captain  
20 Ober said and if there was any  
21 conversation between you and Captain  
22 Ober.

23 A. I can't distinguish between  
24 what was told to me by Lieutenant  
25 Colonel Hikus and by Captain Ober.

1 It was primarily Lieutenant Colonel  
2 Hikus that did the talking and  
3 Captain Ober periodically said things  
4 but I can't distinguish between the  
5 two.

6 Q. Do you have a recollection of  
7 asking Captain Ober any questions?

8 A. I had questions that I asked  
9 to both of them.

10 Q. Now, at the point that Colonel  
11 Hikus and Captain Ober told you about  
12 the FBI investigation, they had  
13 indicated that there were some kind  
14 of fears that it had been into upper  
15 reaches of the Pennsylvania State  
16 Police and maybe the Governor's  
17 Office or some Governor's personnel  
18 or something like that; is that  
19 correct?

20 A. The term higher-ranking  
21 individuals.

22 Q. Okay.

23 A. And the state police and/or  
24 the Governor's Office or both were  
25 used.

1 Q. Now, at that point did you ---  
2 you felt that they should have told  
3 you earlier; is that correct?

4 A. Yes, sir.

5 Q. Why should they have told you  
6 earlier? Now, I want to direct that  
7 question to your attention, not over  
8 any displeasure that they didn't tell  
9 you two weeks earlier, but at the  
10 inception of the FBI notification.  
11 In other words, sir, you were upset  
12 not just because they hadn't told you  
13 two weeks earlier that the FBI had  
14 told them that it was closed. You  
15 were upset because they had not  
16 initially notified you; is that  
17 correct?

18 A. That was part of it, yes.

19 Q. Okay. Now, was that a ---  
20 remember you sort of said, I think  
21 you said four major reasons. I don't  
22 know quite what you meant by that.  
23 Would you tell us?

24 A. I was very angry by the fact  
25 that as Lieutenant Colonel Hikus

1 started to brief me he said that  
2 shortly after he was appointed in his  
3 position that Captain Ober had come  
4 to him. And I'm thinking in my mind,  
5 shortly after you were appointed we  
6 had just sat down and we had talked  
7 about my directions to him to keep me  
8 informed of significant events in the  
9 department, that that was important  
10 to me.

11 Q. Okay.

12 A. I was also concerned that when  
13 he told me, or when Captain Ober told  
14 me, whichever one did, that the FBI  
15 had called them, called Captain Ober  
16 two weeks earlier, I'm thinking two  
17 weeks, why has it taken two weeks to  
18 sit down with me and to brief me on  
19 this?

20 Q. Is that B, sir?

21 A. And number third ---.

22 Q. Okay. Go ahead.

23 A. Number third was the fact in  
24 the early days with Lieutenant  
25 Colonel Hikus, and I'm talking the

1 first, second, and third and probably  
2 the fourth day as well, had talked  
3 about the necessity of not being  
4 involved in the other deputy  
5 commissioners' commands or if you  
6 are, make sure you're talking and  
7 coordinating with them, communicating  
8 with them, because my expectation  
9 from the other deputies is that they  
10 won't do that to your command.

11 Number four ---.

12 Q. Can I ask one little question  
13 right there before you do number  
14 four? Just a little one?

15 A. Yes, sir.

16 Q. A deputy commissioner is a  
17 colonel or a lieutenant colonel?

18 A. The deputy commissioners are  
19 lieutenant colonels.

20 Q. They're all lieutenant  
21 colonels?

22 A. Yes, they are.

23 Q. Okay. Go ahead, sir, number  
24 four.

25 A. And number four had to do with

1       it didn't sound reasonable what I was  
2       being told that the FBI had told them  
3       or had told Captain Ober.

4       Q.        Okay. Let's talk about didn't  
5       sound reasonable first. All right,  
6       sir. What didn't sound reasonable to  
7       you, Colonel?

8       A.        It didn't sound reasonable  
9       that if an FBI office is doing an  
10      investigation into the higher ranks  
11      of the state police that a SAC would  
12      have a street agent pick up the  
13      phone, call across the state, talk to  
14      an individual in BPR and tell them  
15      that they were doing a political  
16      corruption investigation into the  
17      higher ranks of the state police and  
18      not pick up the phone and tell me.  
19      Because remember, I didn't learn  
20      about the term, colonel, until the  
21      following day.

22     Q.        Sir, that's exactly what the  
23      FBI did; didn't it?

24     A.        That's what the FBI agent did,  
25      yes.

1 Q. As you sit here today  
2 answering my questions, you've got to  
3 admit based on all of the facts  
4 before us, that is precisely what the  
5 FBI did; isn't it, sir?

6 A. An FBI agent did that.

7 Q. Okay. So it's not the FBI, it  
8 is an FBI agent did that?

9 A. Let me put it this way.

10 Q. Sure.

11 A. It's an allegation or it was  
12 portrayed that way by Captain Ober to  
13 Lieutenant Colonel Hikus.

14 Q. Now, all right, that's fair  
15 enough. Now, what facts known to you  
16 as we sit here today indicate that  
17 that isn't what happened?

18 A. The issue of high-ranking  
19 officials or individuals in the state  
20 police and/or the Governor's Office  
21 was not told to Captain Ober by the  
22 agent that called him.

23 Q. Wasn't it?

24 A. No.

25 Q. You're not, and again, this is

1 not meant to be facetious, you're not  
2 indicating for us that Captain Ober  
3 is clairvoyant or can tell the  
4 future; are you?

5 A. No, I'm not.

6 Q. Of course not. I mean, that  
7 would be, that would be silly and we  
8 don't have any facts on the record to  
9 indicate that he has some  
10 supernatural ability; right?

11 A. That is correct.

12 Q. All right. But we do know  
13 that strangely enough, according to  
14 what facts have been shared with us  
15 by our FBI friends and your  
16 investigators, that indeed on a wire  
17 procured with the help of an FBI  
18 confidential informant that, in fact,  
19 things of that nature were said, but  
20 supposedly now, supposedly, if we  
21 believe the FBI and your  
22 investigator's findings, this  
23 occurred a couple of weeks after  
24 Captain Ober was told, was initially  
25 contacted by the FBI agent; right?

1 Is that correct?

2 A. It is my understanding that on  
3 October 21st Captain Ober listened to  
4 a videotape or an audiotape with the  
5 FBI where a confidential --- where  
6 the applicant for the alleged job-  
7 selling scheme said that she would  
8 have to go to some lieutenant colonel  
9 or someone affiliated with the state  
10 police.

11 Q. Okay. And so you're  
12 suggesting that Mr. Cush (phonetic)  
13 didn't say anything to Mr. Ober about  
14 any lieutenant colonel or any higher-  
15 ups or anything like that sometime on  
16 or about the beginning of October;  
17 right?

18 A. From reading the reports,  
19 that's what my understanding is.

20 Q. Okay. Well, why didn't you  
21 punish Ober if he --- I mean, he got  
22 lucky. In other words, Ober got  
23 lucky that a couple weeks later this  
24 CI just happened to mention, at least  
25 we know a lieutenant colonel or

1 something to that effect, let alone  
2 what the FBI agent said or didn't  
3 say. So Ober just got lucky; right?

4 A. I don't know what happened  
5 there.

6 Q. Well, that's interesting. You  
7 don't know what happened? Well, if  
8 you don't know what happened, can you  
9 tell us now, who do you think had the  
10 best recollection of that October 5th  
11 conversation between Mr. Cush and Mr.  
12 Ober? Have you reached any  
13 conclusions about that?

14 A. No, I have not.

15 Q. You haven't? So Mr. Ober must  
16 have just gotten lucky and mentioned  
17 this to Colonel Hikus that there were  
18 some higher-ups or colonels or  
19 something of that sort, lieutenant  
20 colonel, whatever the rank was, who  
21 knows, that this CI mentioned; right?

22 A. What Colonel Hikus told me was  
23 on May 13th that the quote, term, end  
24 quote, colonel was used.

25 Q. Okay. Well, why didn't you

1       punish Ober for that if you --- I  
2       mean, do you believe Ober  
3       misrepresented what happened on  
4       October 5th or early October?

5       A.       I don't know what happened  
6       there.

7       Q.       Okay. Well, so at least as of  
8       May 12th you are told that sometime  
9       on or about the beginning of October  
10      '98 that an FBI agent goes to Mr.  
11      Ober and tells him about this FBI  
12      investigation; right?

13      A.       Yes, that an FBI agent in late  
14      September or early October called BPR  
15      and spoke with Captain Ober.

16      Q.       All right. Now, you found  
17      that odd. And I'm not, you know ---  
18      by the way, sir, I do too. I find it  
19      odd. Did you ever find out why the  
20      FBI did that this way?

21      A.       No, I didn't.

22      Q.       Did they suspect you?

23      A.       It was not my understanding  
24      that they suspected me. That's part  
25      of the reason that I was concerned

1 that I wasn't informed.

2 Q. You were concerned that they  
3 had suspected you; weren't you? In  
4 fact, you said that; didn't you?

5 A. I was not concerned that I ---  
6 in fact, I didn't even think that  
7 they suspected me being involved on  
8 May 12th. The only time that that  
9 came out was on May 13th when the  
10 lieutenant colonel had just mentioned  
11 to me that Captain Ober told him the  
12 term colonel was used.

13 Q. Well, then why didn't the FBI  
14 call you up and tell you?

15 A. I don't know.

16 Q. You don't know to this very  
17 day?

18 A. I would take it from my  
19 conversations with the SAC ---.

20 Q. That's Rick?

21 A. The special agent in charge,  
22 Rick Mascara.

23 Q. All right.

24 A. And when I called him on May  
25 20th and he didn't know anything

1 about the investigation.

2 Q. Sir, Mr. Mascara told you on  
3 May the 20th, 1999 that he didn't  
4 know anything about this  
5 investigation?

6 A. I think the words that were  
7 used is when I made an inquiry to him  
8 over the telephone, he said to me,  
9 what inquiry, what investigation?  
10 And the quote, I believe, was I have  
11 to plead with ignorance here.

12 Q. Do you believe him?

13 A. Yes, I do.

14 Q. Now, if Mr. Mascara's telling  
15 the truth, that means that as of May  
16 20th, 1999, he had never been made  
17 aware by the CIA --- excuse me,  
18 please, that a confidential  
19 informant, CI, as they're called, I  
20 guess, for the FBI had implicated  
21 possibly high-ranking officials in  
22 either the Governor's Office or a  
23 lieutenant colonel by rank or colonel  
24 by rank, whatever the CI imparted;  
25 okay? Mr. Mascara didn't --- that

1 had not been brought to his attention  
2 if what he told you May 20th was  
3 true; is that correct?

4 A. That is correct.

5 Q. Or he didn't remember it?

6 A. He told me just that.

7 Q. Yes, which I would find very  
8 hard to believe, but, hey, after all  
9 it's an FBI agent. Now, did you  
10 question Mr. Mascara further?

11 A. Yes, I did.

12 Q. Well, let's stop and go back  
13 to May 12th for a minute. Did you  
14 ever call Louie Freeh?

15 A. No, I did not.

16 Q. Did you ever call anyone in  
17 his office?

18 A. No, I did not.

19 Q. Who in the FBI besides Mr.  
20 Mascara did you call, if anyone?

21 A. Mr. Mascara's the only person  
22 who I talked to in the FBI.

23 Q. Why did you wait until May  
24 20th?

25 A. I can't tell you what else was

1 going on between May 12th and May  
2 13th. That was the day I called him.  
3 I can't tell you why.

4 Q. Well, when did you first call  
5 Mr. Campbell?

6 A. I would have called Mr.  
7 Campbell the afternoon of May 12th  
8 when I got back to headquarters.

9 Q. Why?

10 A. To tell him what was just told  
11 to me because it allegedly involved  
12 high-ranking individuals in the state  
13 police and/or the Governor's Office.

14 Q. And what did Mr. Campbell say?

15 A. He didn't say much of  
16 anything.

17 Q. How current was the Gigliatti  
18 (phonetic) matter at that time?

19 A. I don't have any idea.

20 Q. Do you have any knowledge of  
21 any of the allegations surrounding  
22 Gigliatti in the Governor's Office?

23 A. No, sir.

24 Q. Did you ever discuss the  
25 Gigliatti matter with Mr. Mascara?

1 A. No, sir.

2 Q. How about Mr. Cush?

3 A. No, sir.

4 Q. Did you ever suspect that the

5 FBI killed this investigation that

6 you're talking about?

7 A. Killed which investigation?

8 Q. The one into this state police

9 academy thing.

10 A. That never entered my mind,

11 no. And nor do I think that.

12 Q. Could you trust the FBI?

13 A. Yes, I do.

14 Q. And they trust you?

15 A. Yes, they do.

16 Q. Well, did Mr. Mascara tell you

17 that, that they trust you?

18 A. No, we didn't discuss the

19 issue of trust.

20 Q. It's just assumed it's there;

21 right?

22 A. I assume it's there, yes.

23 Q. Do you trust your officers in

24 the Pennsylvania State Police?

25 A. Yes.

1 Q. Well, up to that point at  
2 least you trusted Mr. Ober; didn't  
3 you?

4 A. Yes.

5 Q. So on the trust scale you  
6 decided in this matter that the FBI  
7 was more trustworthy than Mr. Ober or  
8 was it vice versa after all this was  
9 done?

10 A. I didn't draw a distinction  
11 between the two.

12 Q. Okay. Now, you had called Mr.  
13 Campbell on the afternoon of the  
14 12th. Was he your contact over there  
15 in the Governor's Office?

16 A. Yes, sir.

17 Q. Did you ever find out when the  
18 Governor's Office or anybody over  
19 there was first aware of this FBI  
20 interest?

21 A. My understanding is May 12th  
22 when I told them.

23 Q. So the first time you knew  
24 that Mary Woolly (phonetic) had been  
25 talked to was when your attorney,

1 obviously possessed of this  
2 knowledge, asked questions of Mr.  
3 Hikus; is that correct, yesterday?

4 A. The first time that I actually  
5 knew about it was in response to  
6 Lieutenant Colonel Hikus' response.  
7 Then I knew it.

8 Q. And that was just the other  
9 day, Monday; wasn't it?

10 A. It was earlier this week.

11 Q. Earlier this week. Well, you  
12 knew it --- is it fair to say the  
13 first time you ever knew it was  
14 within the last week; right?

15 A. Yes, sir.

16 Q. So you didn't know that there  
17 were witnesses to this information  
18 about Mr. Hikus talking to the  
19 Governor's Office until a week ago,  
20 somebody in the Governor's Office  
21 until a week ago; right?

22 A. I knew it when Lieutenant  
23 Colonel Hikus testified.

24 Q. And you knew it a little bit  
25 before that, but not more than a week

1 before that; is that fair to say?

2 A. I had discussions with my  
3 Counsel on that.

4 Q. Okay. Well, I'm saying time  
5 wise, I'm not asking about  
6 discussions with your attorney. I  
7 just want to know when you first knew  
8 it. You first knew it, you know, a  
9 week before or less than a week  
10 before Hikus responded to those  
11 questions; is that fair to say?

12 A. It would be less than a week.

13 Q. Okay. Do you know what  
14 voluntary disclosure is under Federal  
15 rules in a Civil case?

16 A. No, I do not.

17 Q. Okay. Sir, I want to take you  
18 back now to May 12th. You've talked  
19 to Mark Campbell. Did Mark Campbell  
20 give you any instructions or say  
21 anything about what he thought you  
22 should do or anything like that?

23 A. No, sir.

24 Q. Did you ask him for advise on  
25 anything?

1 A. No, sir.

2 Q. So you were merely calling him  
3 to inform him; is that correct?

4 A. Yes, sir. And I also told him  
5 that I was going to conduct an  
6 inquiry into the facts of this.

7 Q. Well, why did you want to  
8 conduct an inquiry into the facts of  
9 it? I thought Colonel Hikus had  
10 indicated --- strike that.

11 Colonel Hikus had indicated to  
12 you that the investigation, the FBI  
13 had closed the investigation and that  
14 it was, at least as to higher-ups, it  
15 was unfounded; is that correct?

16 A. That is correct.

17 Q. Okay. And had Colonel Hikus  
18 indicated to you that the extent of  
19 the FBI investigation revealed that  
20 to the best of their knowledge there  
21 was basically one trooper, one  
22 Pennsylvania State Police Trooper  
23 involved?

24 A. Either Lieutenant Colonel  
25 Hikus or Captain Ober told me that on

1 May 12th.

2 Q. Okay. All right. Did you  
3 give Colonel Hikus or Captain Ober  
4 any directions on May 12th? By that  
5 I mean, you know, asked him to record  
6 or asked him to check on something,  
7 anything like that?

8 A. I probably told him on May  
9 12th to put it on a piece of paper  
10 what they'd just told me.

11 Q. Okay. Did you give them any  
12 other instructions?

13 A. None that I recall.

14 Q. Did you believe that Captain  
15 Ober had been disloyal to you?

16 A. I didn't think about loyalty.

17 Q. Have you ever thought about  
18 loyalty?

19 A. Not really.

20 Q. Have you ever carried any  
21 personal anger in you over this  
22 matter?

23 A. Over the issue of not being  
24 told about the FBI investigation?

25 Q. Yes, yes.

1 A. And the reasons under that?

2 Q. Yes, sir.

3 A. And have I ever been what?

4 Q. Have you carried any personal  
5 anger with you over not being told by  
6 Captain Ober when the FBI contacted  
7 him?

8 A. No, sir.

9 Q. Have you carried any anger in  
10 you against Colonel Hikus because he  
11 ordered Captain Ober not to tell  
12 anyone in October?

13 A. No, sir.

14 Q. Have you carried any anger in  
15 you against Captain Ober because he  
16 didn't tell, now Colonel, then Major,  
17 Conley?

18 A. No, sir.

19 Q. Did you suspect on May 12th  
20 that Captain Ober had violated a  
21 Pennsylvania State Police Regulation?

22 A. I never gave it any thought.

23 Q. And you never have; have you?

24 A. No, not really.

25 Q. How about Colonel Hikus? Did

1 you ever consider that he had  
2 violated a Pennsylvania State Police  
3 Regulation on May 12th or since May  
4 12th, have you --- I assume you  
5 haven't thought about that either?

6 A. I thought about him not  
7 following my directives on keeping me  
8 informed of significant events that  
9 we talked about October 5th, 6th, 7th  
10 and 8th.

11 Q. Sir, why didn't you say, you  
12 guys did the right thing? Didn't  
13 they do the right thing, Colonel?

14 A. No, I think Lieutenant Colonel  
15 Hikus should have told me.

16 Q. Well, did Captain Ober do the  
17 right thing?

18 A. I think Captain Ober should  
19 have told his bureau director.

20 Q. Why?

21 A. Because I think that's the  
22 right thing to do.

23 Q. But it doesn't violate a  
24 regulation; right?

25 A. No, sir. It violated a

1 practice of the department.

2 Q. A practice of the department?

3 A. Yes.

4 Q. Well, you believe that a ---  
5 if the FBI's conducting an  
6 investigation and they have reason to  
7 believe that there may be higher-ups  
8 in the Pennsylvania State Police  
9 involved that they should come to  
10 you. You actually believe that?

11 A. Unless they have strong  
12 probable cause to believe that I am  
13 involved, yes, I do.

14 Q. Okay. Why? Just so you know  
15 and are not embarrassed; is that why?

16 A. I'm the head of the agency. I  
17 have a responsibility to the agency.

18 Q. Well, Clinton's President of  
19 the United States and we've seen that  
20 fiasco. I mean, not that that  
21 necessarily applies here, but I mean,  
22 after all he's, you know, President  
23 of the United States, not getting  
24 into all the politics nonsense  
25 surrounding that situation. I mean,

1 if someone is investigating potential  
2 wrongdoing, don't they have a duty  
3 under basic investigatory principles  
4 to try to limit as much as possible  
5 the dissemination of information in  
6 an investigation or am I wrong about  
7 that?

8 A. I think if the FBI has a  
9 criminal investigation into higher-  
10 ups in the state police, and I ---  
11 and they don't have strong reasonable  
12 or probable cause that I'm involved,  
13 I think they have a responsibility to  
14 come to me as the head of the agency.

15 Q. Okay. Well, let's --- and now  
16 that is Colonel Evanko's point of  
17 view; am I correct?

18 A. I think that would be any  
19 superintendent or commissioner's  
20 point of view.

21 Q. Well, do you know that it is  
22 any superintendent's or let's say  
23 high-ranking law enforcement  
24 official's point of view?

25 A. I think if you talk to any

1 superintendent or commissioner of a  
2 state police organization that would  
3 be their expectation.

4 Q. And if somebody doesn't adhere  
5 to that expectation should they be  
6 punished?

7 A. I don't have the authority to  
8 be punishing an FBI, special agent in  
9 charge.

10 Q. What about your own people?  
11 Should they be punished?

12 A. For what?

13 Q. I don't know. Not telling  
14 you? I mean, you're telling me that  
15 they --- sir, if I understand you  
16 correctly, and I may not.

17 BRIEF INTERRUPTION

18 ATTORNEY BAILEY:

19 We'll suspend for just  
20 five minutes.

21 VIDEOGRAPHER:

22 The time is 10:22 a.m.,  
23 March 27th, 2002. We're  
24 suspending the deposition.

25 SHORT BREAK TAKEN

1                   ATTORNEY BAILEY:

2                   Ladies and gentlemen,  
3                   this is Attorney Andrew  
4                   Ostrowski who's working with  
5                   me on this matter, is here  
6                   with us today.

7                   VIDEOGRAPHER:

8                   It's now 10:34 a.m. and  
9                   the deposition of Mr. Evanko  
10                  has resumed.

11                  BY ATTORNEY BAILEY:

12                  Q.         Okay. Colonel, thank you very  
13                  much for the courtesy of allowing me  
14                  to contact my office and find out  
15                  that your erstwhile attorneys have  
16                  told Judge Caldwell that I smeared  
17                  some documents I'm going to ask you  
18                  about. So maybe that will get us a  
19                  hearing. Something good comes out of  
20                  everything, Colonel, in the legal  
21                  process. I want to go back, sir, if  
22                  I may to the questioning that I had  
23                  about the --- we're talking about  
24                  your state of mind and your thoughts  
25                  on the 12th and subsequent to the

1       12th, your thoughts about, and  
2 conclusions about the conduct, the  
3 acts or omissions of Colonel Hikus  
4 and/or Captain Ober. So let me go  
5 back to that and finish that up,  
6 okay?

7       A.       Yes, sir.

8       Q.       All right, sir. Thank you.  
9       Now, you had indicated that in  
10 response to one of my questions that  
11 you felt any supervisor in a law  
12 enforcement field, unless there were  
13 good probable cause to believe that  
14 the head of the group were involved,  
15 that in that type of scenario  
16 generally that the head of the group  
17 should be informed or should be told;  
18 is that correct?

19      A.       Yes, if the SAC in a field  
20 office is doing a corruption  
21 investigation of the higher-ups and  
22 doesn't have strong probable cause to  
23 believe that the head of the agency  
24 is involved, it is my statement that  
25 he should be calling or she should be

1 calling that head.

2 Q. Well, if BPR and the  
3 Pennsylvania State Police receive a  
4 complaint about you, Captain ---  
5 let's say some captain somewhere, and  
6 receives a complaint about you,  
7 Colonel Evanko, should BPR tell you  
8 before they do the investigation?

9 A. Give me a circumstance that  
10 you are talking about.

11 Q. Well, in this particular case,  
12 let's take this case here. Captain  
13 Ober's recollection is that the FBI  
14 had indicated that there were higher-  
15 ups or somebody in some rank that was  
16 lieutenant colonel or colonel or  
17 somebody higher up, maybe in the  
18 Governor's Office and maybe in the  
19 Pennsylvania State Police, who could  
20 be involved in this, and that he  
21 passed that on, he passed that on to  
22 Colonel Hikus. Colonel Hikus told  
23 him, hey, you don't tell anybody, you  
24 keep this information close to the  
25 vest, you don't tell anybody but me.

1 Now, that's basically what happened;  
2 right?

3 A. Yes, that is. That is what  
4 happened when Captain Ober received  
5 information from the FBI.

6 Q. Right.

7 A. Went past the hearing  
8 commander to Lieutenant Colonel Hikus  
9 and told Colonel Hikus.

10 Q. Okay. Now, what was Captain  
11 Ober's assignment at that time? What  
12 was he doing? I'm sorry, sir. I cut  
13 you off. I'm sorry. Go ahead.

14 A. If that's the end of the  
15 question?

16 Q. Yes, sir.

17 A. At the time that he went to  
18 Lieutenant Colonel Hikus he was the  
19 Director of Internal Affairs.

20 Q. He was, it's called IAD;  
21 right? That division within BPR;  
22 correct?

23 A. Yes, it is.

24 Q. Now, where was Mr. Conley at  
25 that time?

1 A. Where was he physically?

2 Q. Sure. Where was he?

3 A. I believe he was, on October  
4 or May 12th, I believe he was at a  
5 funeral.

6 Q. Okay. And where was he in  
7 terms of his assignment?

8 A. The Director of the Bureau of  
9 Professional Responsibility.

10 Q. Now, is it fair to say that  
11 you feel that Captain Ober should not  
12 have gone to Colonel Hikus, Captain  
13 Ober should have gone to Colonel  
14 Conley?

15 A. Yes, that's what the field  
16 regulation states.

17 Q. Yes. I'm sorry. What field  
18 regulation?

19 A. FR 1-1.17.

20 Q. Okay. Now, we're going to  
21 talk a little while later about  
22 AR 1-102(c). But let me ask you. At  
23 this point, you're telling us then  
24 that, assuming Captain Ober had done  
25 what you feel was the right thing,

1 and had gone to then Major Conley,  
2 what should Major Conley have done?

3 A. Major Conley should have  
4 informed the Deputy Commissioner of  
5 Administration.

6 Q. Who was?

7 A. Lieutenant Colonel Foy  
8 (phonetic).

9 Q. Well, you told us that you  
10 trust the FBI; right?

11 A. Yes.

12 Q. Do you have concerns that they  
13 trust you?

14 A. No, I do not.

15 Q. Is it fair to say that you  
16 think Mr. Cush messed up, made an  
17 error?

18 A. In what regard do you mean  
19 made an error?

20 Q. What should he have done?  
21 Should he have told Rick? Now,  
22 you're telling me he didn't tell Rick  
23 because you talked to Rick on May  
24 20th and Rick didn't know anything  
25 about it. And you and I both know

1 doggone well that if some FBI agent  
2 tells Rick that higher-ups at any  
3 point, founded or not, that higher-  
4 ups in the state police and the  
5 Governor's Office are involved,  
6 Rick's going to remember that,  
7 Colonel. You and I both know that.  
8 But he didn't know anything on May  
9 20? Rick didn't know anything?

10 A. That's correct.

11 Q. All right, sir. Now, does  
12 that mean that Mr. Cush screwed up?

13 A. No, because Mr. Cush, as I  
14 remember his statement, said that he  
15 did not mention high-ranking  
16 individuals in either the state  
17 police or the Governor's Office to  
18 Captain Ober.

19 Q. He didn't mention them or he  
20 didn't recollect it after Mr.  
Williams went and talked to him?

21 A. I believe the words that he  
22 used is I don't remember ever  
23 mentioning higher-ups in the state  
24 police or the Governor's Office.

1 Q. Which brings us back to  
2 Captain Ober, if he was correct,  
3 being either very lucky or just like  
4 an incredible, you know, incredible  
5 example of the law of probability I  
6 guess if the CI was going to mention  
7 this later on. But the point is that  
8 if it involved Mr. Stanton; right?

9 A. Yes.

10 Q. If the investigation involved  
11 Mr. Stanton, and it was a public  
12 corruption investigation, and it  
13 involved appointments to the academy,  
14 you don't think Mr. Cush messed up  
15 because there was no reason to  
16 believe that higher-ups were  
17 involved, at least in October; right?  
18 The beginning of October?

19 A. First I think it is the  
20 applicant to the state police that  
21 mentions that someone would have to  
22 go to a lieutenant colonel.

23 Q. Right.

24 A. Or someone affiliated with the  
25 state police.

1 Q. Yes.

2 A. And I think if Cush had  
3 information that quote, higher-ups,  
4 or higher-up individuals or officials  
5 from the state police or the  
6 Governor's Office, he should have  
7 reported that to his SAC.

8 Q. So I ask you, my question was,  
9 did Cush mess up? And you said he  
10 didn't mess up. Now, are you telling  
11 me he messed up?

12 A. Not with the information that  
13 he is saying he did not supply to  
14 Captain Ober.

15 Q. But sir, they sat down and  
16 listened to the tape together.

17 A. On October 21st.

18 Q. Yes, sir. Now, at that point  
19 did Cush screw up? Did he mess up at  
20 that point by not going to Rick?

21 A. I'm not sure.

22 Q. You're not sure?

23 A. Yes.

24 Q. Now, sir, we know that at  
25 least by October 21, 1998 that Mr.

1      Cush is sitting right there, of  
2      course he's telling Mr. Williams that  
3      Mr. Ober's ears perked up. Mr. Cush  
4      is sitting in a room listening to a  
5      tape. Lieutenant colonels in the  
6      state police are mentioned on that  
7      tape. You call Rick May 20th of the  
8      following year and he doesn't know  
9      anything about this. But you don't  
10     have --- you reached no conclusion  
11     whether or not Mr. Cush screwed up by  
12     not telling Rick?

13     A.       I don't know what significance  
14     Mr. Cush gave to the applicant saying  
15     that someone would have to go to a  
16     lieutenant colonel or someone  
17     affiliated with the state police.

18     Q.       Well, now, we have established  
19     that one of your reasons for being  
20     upset had to do with Hikus ostensibly  
21     violating these instructions of yours  
22     about stepping outside his area of  
23     responsibility; correct?

24     A.       That was one of the concerns I  
25     had.

1 Q. Sure. Now, you've also agreed  
2 with me that sometime on or about  
3 October of 1998 this FBI CI mentions  
4 lieutenant colonels; correct?

5 A. No.

6 Q. They didn't? The tape didn't  
7 say that?

8 A. No.

9 Q. Your transcript of October  
10 doesn't say that, October 13th, '98  
11 doesn't say, doesn't use the word  
12 lieutenant colonel?

13 A. Not by the CI, no.

14 Q. Who by?

15 A. The applicant, Bridges.

16 Q. Okay. But they're mentioned;  
17 right?

18 A. The applicant states again  
19 somebody would have to go to a  
20 lieutenant colonel or someone  
21 affiliated with the state police.

22 Q. Did Bridges know anybody  
23 involved in politics?

24 A. I don't know.

25 Q. Do you know who Leonard Bodack

1 is ?

2 A. He is a State or was a State  
3 Senator.

4 Q. How about Joe Preston?

5 A. He is or was a State  
6 Representative.

7 Q. Were they mentioned in any of  
8 this FBI investigation?

9 A. Someone mentioned Bodack in  
10 the taped interview or the consensual  
11 interview interception.

12 Q. Now ---.

13 A. In fact, I think it was the CI  
14 that mentioned Bodack.

15 Q. Okay. Well, do State Senators  
16 and State Representatives vote on  
17 matters of importance to the Governor  
18 of the State of Pennsylvania from  
19 time to time? Little things like  
20 appropriations and stuff like that?

21 A. There is an appropriations  
22 committee that votes on supporting  
23 appropriations, yes.

24 Q. For the Pennsylvania State  
25 Police?

1 A. Yes.

2 Q. Now, Rick says to you when you  
3 talked to him on May 20th, I think  
4 your quote was that he pleads  
5 ignorance; right?

6 A. I think that's the quote, got  
7 to plead ignorance.

8 Q. Not to plead ignorance. Out  
9 of where? Which office?

10 A. (Inaudible response).

11 Q. Did you ask Rick to go back  
12 and check on these matters?

13 A. I think he told me and I'm  
14 going to have to look at my notes. I  
15 don't know whether I asked him or  
16 whether he said I'd have to get back  
17 to you.

18 Q. Well, did he get back to you?

19 A. Yes, he did.

20 Q. What did he say when he got  
21 back to you?

22 A. I would have to look at the  
23 notes.

24 Q. Well, tell us as you recollect  
25 today. This is a very important

1 matter. Tell us if you know.

2 A. He does not cite any high-  
3 ranking officials in the state police  
4 or the Governor's Office.

5 Q. He doesn't cite any?

6 A. I'd have to look at my notes  
7 to see what ---.

8 Q. I'm talking about your  
9 recollection now.

10 A. Okay.

11 Q. I don't want you to look at  
12 your notes. I want to ask you your  
13 recollection as you sit here today.  
14 If you don't remember and you don't  
15 know, that's fine. We'll go to the  
16 notes at some point if you want to  
17 later. Right now the answer is no.  
18 I'd like to just check your  
19 recollection.

20 A. Then I'm saying I do not  
21 remember ---

22 Q. Okay.

23 A. --- our conversation when he  
24 called back later that day.

25 Q. So you don't remember what

1 Rick said when he called back later  
2 the 12th as you sit here today?

3 A. If I were to refresh my memory  
4 with my notes I'm sure I would  
5 remember.

6 Q. Well, did you make notes when  
7 Mr. Hikus and Mr. Ober came in the  
8 room and sat down with you?

9 A. No, I did not.

10 Q. As a matter of fact, after  
11 that meeting you at one point asked  
12 Colonel Coury to come back to you and  
13 to make notes about what happened in  
14 that meeting; right?

15 A. I paged Colonel Coury and  
16 asked him to come back to the  
17 academy.

18 Q. Yes.

19 A. I asked him to come in because  
20 this involved him and we asked  
21 Colonel Coury to listen to what  
22 Lieutenant Colonel Hikus had just  
23 told me.

24 Q. Captain Ober wasn't there; was  
25 he?

1 A. No, he was not.

2 Q. And that was on the 12th; was  
3 it?

4 A. Yes, it was.

5 Q. Do you remember whether Rick  
6 got back to you the 12th or the 13th?  
7 I'm sorry. The 20th or after the  
8 20th of May? Did he get back to you?  
9 You initially spoke to Rick on the  
10 20th of May; correct?

11 A. Yes, sir.

12 Q. Okay. Did he get back to you  
13 after that, after the 20th or was it  
14 that day?

15 A. It was on the 20th.

16 Q. Now, who was in the room with  
17 him, sir?

18 A. I do not know.

19 Q. Were you on a speakerphone?

20 A. Not that I know of.

21 Q. Did he ever indicate whether  
22 he had met with Mr. Cush and Mr.  
23 Suhy?

24 A. I drew the conclusion that he  
25 had talked to Cush, but I don't know

1 if that is an accurate conclusion.

2 Q. Well, did he tell you anything  
3 about the history of this  
4 investigation?

5 A. I think that he talked about  
6 the case involving a municipality  
7 testing. Again, I'd have to look at  
8 my notes.

9 Q. Well, do you have a  
10 recollection of whether he indicated  
11 that he had recorded any parts of  
12 this --- and strike that.

13 Do you have a recollection of  
14 whether the FBI agents had reported  
15 anything about this investigation to  
16 the Pennsylvania State Police before  
17 going to Captain Ober?

18 A. Yes, without question he did  
19 say that this was an older  
20 investigation.

21 Q. An older investigation?

22 A. Yes.

23 Q. Why didn't you know about it,  
24 Colonel?

25 A. Because apparently it did not

1 involve higher-ranking officials in  
2 the state police.

3 Q. Oh, I see. I'm sorry. Now,  
4 I'm beginning to understand. It  
5 involved Pennsylvania State  
6 Policemen, but it didn't involve  
7 higher-ranking Pennsylvania State  
8 Policemen. So the FBI wouldn't tell  
9 you about those; right?

10 A. No. They don't have to tell  
11 me about a regular investigation on a  
12 trooper, no. But I would expect them  
13 to do so if it's into the higher  
14 ranks.

15 Q. Well, they don't have to tell  
16 you about anything; do they?

17 A. They don't have responsibility  
18 to do anything beyond the statutes.

19 Q. Sure. And if you found an FBI  
20 agent doing something wrong and  
21 violating a state law and your people  
22 were out there investigating them,  
23 you wouldn't have any duty to tell  
24 them; would you?

25 A. I think the troop commander or

1 the bureau director would tell the  
2 SAC that.

3 Q. So your people could go tell  
4 the FBI about an investigation into  
5 them without checking with you first?

6 A. Say it again.

7 Q. Sure. The Pennsylvania State  
8 Troopers are out there, they're doing  
9 an investigation, they find somebody,  
10 some FBI personnel is involved, they  
11 don't have to come to you, they can  
12 go right to the FBI?

13 A. That is correct.

14 Q. Oh, okay. Well, would you  
15 expect them to exercise some  
16 restraint about notifying targets or  
17 potential targets of an  
18 investigation?

19 A. Would I expect an investigator  
20 not to talk to an identified target?

21 Q. Sure.

22 A. Yes, that would be my  
23 expectation.

24 Q. Not to tip them off?

25 A. Not to talk to an identified

1 target?

2 Q. Right.

3 A. Yes.

4 Q. Unless there was some reason  
5 or some advantage to be gained from  
6 it of course. But normally the  
7 procedure would be not to tip  
8 somebody off if they're being  
9 investigated; right?

10 A. If you have an identified  
11 target I would not expect that you  
12 would tell that target.

13 Q. Okay. How about an  
14 unidentified target like a member of  
15 a group?

16 A. Give me an example.

17 Q. Sure. Lieutenant colonels in  
18 the Pennsylvania State Police.

19 A. Then I would expect the  
20 special agent in charge to come  
21 directly to me or call me directly.

22 Q. But the special agent in  
23 charge told you he didn't know, sir.  
24 You just told us that. You talked to  
25 him on May 20th and, Colonel, he told

1 you I have to plead ignorance, I  
2 don't know about this.

3 A. It's also my understanding  
4 that Cush is saying that he never  
5 remembers mentioning or didn't  
6 mention any high-ranking officials  
7 within the state police and/or the  
8 Governor's Office.

9 Q. Yes, Agent Cush. You were  
10 here during Colonel Coury's  
11 deposition; right?

12 A. I did sit in on Colonel  
13 Coury's, yes.

14 Q. Did he express some kind of  
15 concern about FBI, not that they  
16 would ever do anything intentionally,  
17 unpolitical as they are, he never ---  
18 he said he had a concern, I thought.  
19 I thought he testified that sometimes  
20 he had some concern with leaking  
21 information from the FBI; do you  
22 recollect?

23 A. I believe he said ---.

24 Q. Do you have that feeling or  
25 concern?

1 BRIEF INTERRUPTION

2 BY ATTORNEY BAILEY:

3 Q. Do you have a concern about  
4 that?

5 A. I don't have a concern that  
6 the FBI would intentionally leak  
7 information, no.

8 Q. Okay. Now, did Mr. Cush ever  
9 indicate that even though he has no  
10 recollection of discussing  
11 confidentiality with Captain Ober,  
12 that he would expect him to keep the  
13 information confidential?

14 A. I think the words were  
15 discretion.

16 Q. Okay. All right. And did he  
17 indicate that he would expect, he  
18 would just normally trust the captain  
19 in the Pennsylvania State Police to  
20 exercise, let's say, use the word  
21 discretion as you used, discretion in  
22 how you share information; right?

23 A. I think that's generally  
24 accurate.

25 Q. Okay. Well, does that go for

1 an agent in the FBI?

2 A. What do you mean?

3 Q. Is that something that you  
4 would expect of qualified law  
5 enforcement personnel of any rank?

6 A. To exercise discretion on an  
7 investigation?

8 Q. On notifying people of where  
9 an investigation goes?

10 A. You lost me.

11 Q. Well, Colonel Hikus had  
12 indicated and to me it seems rather  
13 basic, of course, but I apologize for  
14 my question not being clear. That,  
15 you know, you're doing an  
16 investigation, you try to keep the  
17 information as limited to as few  
18 people as possible, because people  
19 talk; correct?

20 A. That's basically correct.

21 Q. Did you ever find out why Cush  
22 didn't tell Rick?

23 A. Because there was no  
24 investigation into higher-ranking  
25 officials in the state police.

1 Q. But there was information to  
2 indicate that there might be  
3 problems; correct?

4 A. I don't know what  
5 interpretation he made of the  
6 statement from Bridges that someone  
7 would have to go to a lieutenant  
8 colonel or someone affiliated with  
9 the state police.

10 Q. Well, you now know about  
11 Bridges. What did, again, what did  
12 Ober know about Bridges then? What  
13 did Cush know about Bridges then?

14 A. What Lieutenant Colonel Hikus  
15 and Captain Ober told me as it  
16 related to Bridges or Stanton was  
17 that the FBI agent on this phone call  
18 in May or early September or early  
19 October, told them that they had a  
20 confidential informant who knew a  
21 trooper by the name of Stanton. The  
22 informant told the agent that Stanton  
23 allegedly told him that he could get  
24 people into the state police academy.  
25 He told the informant that he could

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1 get them reclassified from an  
2 ineligible status, that an eligible  
3 status had been made, he could get  
4 them through the polygraph  
5 examination, that he could get them  
6 through the background examination,  
7 the physical fitness testing, and I  
8 think the psychological examination  
9 and that finally he could get them  
10 appointed to the academy.

11 Q. You've done a great job of  
12 reviewing all of this, but you don't  
13 remember your discussions with Rick.  
14 You have to --- you need your notes  
15 to do that?

16 A. Yes, I would.

17 Q. I applaud in the information  
18 you have about the rest of this, but,  
19 you know, as far as that tape is  
20 concerned, do you have any  
21 information known to you to indicate  
22 that Mr. Ober would know Bridges or  
23 the extent of Bridges' knowledge in  
24 October of '98?

25 A. After October 21st he would

1 have.

2 Q. Well, what would he have known  
3 about Bridges after October 21st  
4 other than what was in this tape?

5 A. Nothing.

6 Q. Well, what about before that?  
7 Any information that you have that  
8 would indicate that Mr. Ober had  
9 information about Bridges before  
10 that?

11 A. I don't think Bridges' name  
12 was mentioned to me at all.

13 Q. Oh, okay. Well, what about  
14 Cush? What have you learned about  
15 Cush's knowledge of Bridges and  
16 Bridges' role?

17 A. I don't remember.

18 Q. And didn't --- Mr. Cush also  
19 said he had some difficulty hearing  
20 that word lieutenant colonel; didn't  
21 he?

22 A. I don't recall that, no.

23 Q. And that, in fact, do you know  
24 whether he testified that Mr. Ober  
25 pointed out the word lieutenant

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1 colonel. Here is this FBI agent  
2 sitting here talking about this  
3 source. In fact, he remembered  
4 talking to Mr. Williams, the word  
5 eyeball, eyeballing somebody, but he  
6 didn't remember when he went up in  
7 October to talk to Captain Ober what  
8 this --- he couldn't hear this term  
9 lieutenant colonel, and Captain Ober  
10 was the one who picked it out. Did  
11 you ever find anything out about  
12 that?

13 A. No, I didn't.

14 Q. Do you remember whether Rick  
15 had ever indicated that Ober had  
16 expressed concern about where to take  
17 the information?

18 A. I know that he expressed that  
19 concern to Lieutenant Colonel Hikus.

20 Q. Do you know whether he ever  
21 expressed that concern to Mr. Cush?

22 A. I'm not sure.

23 Q. But isn't that a very key  
24 issue here? If we're looking at the  
25 credibility, sir, of Mr. Cush and Mr.

1 Ober and you're checking the facts  
2 about what happened in October of  
3 1998, wouldn't reflections of Mr.  
4 Ober or comments by Mr. Ober having  
5 to do with a concern about where he  
6 takes information, wouldn't that be  
7 of importance?

8 A. It was of importance to me as  
9 to whether or not the FBI had  
10 directed confidentiality in this  
11 case. I would want to know that and  
12 take that into consideration.

13 Q. Well, would you think the FBI  
14 would want to know that and take that  
15 into consideration? Hold on a  
16 second. Colonel, let me go over this  
17 again and clarify it, okay? Do you  
18 know whether Captain Ober expressed a  
19 concern to the FBI about where he  
20 should take this information?

21 A. I don't know if he expressed  
22 concern to the FBI. I know he  
23 expressed concern to Lieutenant  
24 Colonel Hikus.

25 Q. Yes, and Colonel Hikus told

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1 him to be quiet and just report to me  
2 and cooperate with them and just  
3 report to me; right?

4 A. That is correct.

5 Q. So your primary  
6 dissatisfaction, if we can term it  
7 that, with Captain Ober was the fact  
8 that he didn't go to Conley, that  
9 instead he went to Hikus; right?

10 A. Yes, I was concerned about  
11 that.

12 Q. Okay. You know, you're not  
13 --- you don't have any concern with  
14 Captain Ober following the orders of  
15 Colonel Hikus? I mean, Colonel Hikus  
16 gave him a lawful order, you do X and  
17 Y and Captain Ober followed those  
18 orders; right?

19 A. I --- he did follow those  
20 orders, and I have no problem with  
21 him following those. In fact, that  
22 would be my expectation, and I think  
23 that was a mitigating factor as it  
24 related to Captain Ober's following  
25 those.

1 Q. A mitigating factor is that  
2 violating his chain of command. Are  
3 you saying he violated his chain of  
4 command? Is that what you're saying?

5 A. He violated rule 1.17. My  
6 primary concern was Lieutenant  
7 Colonel Hikus.

8 Q. I must say, sir, I reached  
9 that conclusion a long time ago in  
10 this matter. And we'll come to that.  
11 But I did review your notes and I  
12 thought something was mentioned  
13 there, over-concerned about going  
14 anywhere with info. And I thought  
15 that was, those were notes that you  
16 made in your conversation with Rick.

17 A. That's correct.

18 Q. Well, what do you mean?  
19 What'd you write down there? What's  
20 that about?

21 ATTORNEY CHRISTIE:

22 Counsel --- sorry.

23 ATTORNEY GUIDO:

24 It's improper to  
25 question him without showing

1                   him the document and letting  
2                   him put that sentence in the  
3                   context of his own notes.

4                   It's improper to do that and I  
5                   object.

6 BY ATTORNEY BAILEY:

7 Q.               What do you remember Rick  
8 saying about Ober's comments  
9 regarding information and what to do  
10 with it?

11 A.               The statement that you just  
12 read to me from my note, I think what  
13 he meant was that he expressed some  
14 concern to the agent about who he  
15 should go to with this.

16 Q.               Well, did that beg a question  
17 to you about whether or not there had  
18 been a discussion of confidentiality  
19 between Cush and Ober?

20 A.               I think there was an  
21 acknowledgement that there was a  
22 discussion with the use of  
23 discretion.

24 Q.               And who acknowledged that,  
25 sir? Rick; didn't he?

1 A. Captain Ober and Lieutenant  
2 Colonel Hikus.

3 Q. There wasn't an  
4 acknowledgement by the FBI of that?

5 A. According to my notes that  
6 must have been something I discussed  
7 with the SAC as well.

8 Q. And the SAC, Mr. Mascara,  
9 Rick, your friend, told you that Ober  
10 had expressed concern about what to  
11 do with the information.

12 A. That would be correct.

13 Q. Colonel Evanko, thank you.  
14 Now, did Mr. --- I'm sorry, sir.

15 A. I would put that into context  
16 as to what he got from whoever he  
17 talked to.

18 Q. Okay. Sure. I mean, that  
19 would naturally or those comments or  
20 the FBI awareness of Mr. Ober's  
21 thoughts would have to exist in a  
22 context of whatever passed between  
23 Mr. Ober and the FBI agent; right?

24 A. Yes.

25 Q. That's what you're saying;

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1 right?

2 A. Yes.

3 Q. Okay. And I'm not --- I'll  
4 be, you know, very foolish to  
5 disagree with you on that. I mean,  
6 that's only common sense. But you in  
7 trying to learn, I mean, your  
8 justification, and we're going to  
9 talk about your investigation in just  
10 a moment, but your justification for  
11 the investigation has always been  
12 termed by the Defendants and by  
13 yourself today as into the facts and  
14 circumstances surrounding this FBI  
15 inquiry; right, sir?

16 A. Surrounding the whole event.

17 Q. Surrounding the whole event;  
18 right?

19 A. Yes.

20 Q. And I asked you questions  
21 about who you believed or what you  
22 felt that Captain Ober had done wrong  
23 and I think you were, you say you  
24 just never reached a conclusion about  
25 that. In fairness to you I think

1       that's what you testified to; right?

2       A.       I think I testified that it  
3       was a --- if I were to look for a  
4       violation or identify a violation it  
5       would have been a violation of the  
6       practice of the department, as well  
7       as a violation of reporting to your  
8       supervisor an individual who has  
9       violated rules and regulations.

10      Q.       Well, you said that Ober  
11     violated rule 1.17. Now, what's that  
12     rule?

13      A.       Reporting information to your  
14     supervisor.

15      Q.       There's an affirmative duty on  
16     the part of an investigator to report  
17     to a supervisor an FBI inquiry?

18      A.       If it involves an allegation  
19     of a violation of the rules and  
20     regulations or law.

21      Q.       Yes. Okay. Fair enough.  
22     Now, you told me that when you talked  
23     to Rick, Rick talked about how old  
24     this investigation was; right?

25      A.       Yes.

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1 Q. Did Rick ever use the year or  
2 mention the year 1997?

3 A. I believe that he did.

4 Q. And you heard Colonel Coury's  
5 deposition; right?

6 A. Yes, I did.

7 Q. Did you hear Colonel Coury  
8 testify that he got a call from  
9 Captain Monico (phonetic) about  
10 Stanton's activities?

11 A. I don't recall hearing that,  
12 no.

13 Q. You don't recall hearing that?

14 A. No, sir.

15 Q. Well, do you know whether Mr.  
16 Coury did get any information from,  
17 is it Berrings (phonetic)?

18 A. Not that I know of.

19 Q. And Monico, you don't know  
20 whether they ever told Mr. Coury  
21 anything about the previous  
22 investigation?

23 A. I don't recall Colonel Coury  
24 testifying to that nor do I know  
25 about it.

1 Q. Well, didn't Rick tell you  
2 that they had told IAD --- I'm sorry,  
3 sir.

4 A. Go ahead.

5 Q. No, no, go ahead.

6 A. I lost it, go ahead.

7 Q. When you talked to Rick didn't  
8 he tell you that this investigation  
9 had been around and they went back  
10 into it for some reason?

11 A. I think he did tell me that.

12 Q. Yes. And did he ever indicate  
13 that they had told the state police  
14 and nothing was done?

15 A. Not that I recall, no.

16 Q. Well, do you know whether Mr.  
17 Cush had indicated that he, in fact,  
18 went to the western division IAD and  
19 told him about Stanton before?

20 A. I think Agent Cush had gone to  
21 Sergeant Berrings and told him or he  
22 asked him to check to see if Trooper  
23 Stanton was doing any undercover work  
24 into a job selling cadets for  
25 appointment to the Academy.

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1 Q. Now, did you know whether the  
2 organized crime division of western  
3 Pennsylvania was ever notified?

4 A. I don't know.

5 Q. Well, Rick had indicated to  
6 you, did he not, that there had been  
7 at least some inquiry to the  
8 Pennsylvania State Police prior to  
9 ever going to Captain Ober in October  
10 of '98; didn't he? He told you that.

11 A. He may have, but I know that  
12 Cush in his statement said that.

13 Q. Yes. Well, why didn't you  
14 have that investigated, sir?

15 A. By the time that I read this  
16 entire report it was being  
17 investigated administratively and  
18 criminally.

19 Q. Did you assign a couple of  
20 majors to it to check out whether  
21 Monico, Frank, what he was doing?

22 A. I'm not sure that I knew  
23 anything about Monico, but it was a  
24 regular criminal investigation and  
25 administrative investigation.

1 Q. Well, why wouldn't that  
2 scenario deserve as much  
3 investigation as the facts and  
4 circumstances surrounding the 1998,  
5 the October 1998, incident?

6 A. I would think that the  
7 investigation into the criminal  
8 conduct of Stanton was substantially  
9 more than the administrative inquiry  
10 into the facts and circumstances of  
11 this incident.

12 Q. Sir, aren't they two different  
13 things?

14 A. Yes, they are.

15 Q. Sure, and the issue that you  
16 have told us and your Codefendants  
17 have told us time and time again was  
18 that you were looking at the facts  
19 and circumstances about what occurred  
20 in October of '98, not because Ober  
21 or Hikus are criminals or anything  
22 like that, you wanted to find out  
23 what happened in these circumstances  
24 as the Commissioner of the  
25 Pennsylvania State Police; right?

1 A. That was right.

2 Q. Well, why didn't you do the  
3 same thing in regards to what the  
4 breakdown was in '97?

5 A. Because by the time I found  
6 that out by reading the entire  
7 administrative inquiry there was  
8 already an ongoing criminal and  
9 administrative investigation into  
10 Stanton.

11 Q. Okay. Well, the criminal  
12 investigation into Stanton, those  
13 standards in a criminal investigation  
14 are separate from the kind of  
15 interdepartmentally or disciplinary  
16 investigations or administrative  
17 investigations that you claim were  
18 the basis for checking into the  
19 events of October '98; right? I  
20 mean, they're two different things?

21 A. A criminal investigation is  
22 different from an internal affairs  
23 investigation, yes.

24 Q. Sure. And the administrative  
25 investigation that you're referring

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1 to into Mr. Stanton is like a BPR  
2 that you're going to do into the  
3 conduct or allegations of misconduct  
4 of a trooper or an officer in a  
5 normal circumstance; right?

6 A. That is correct.

7 Q. Sure it is. But you have  
8 never initiated an investigation into  
9 the facts and circumstances  
10 surrounding FBI reports as early as  
11 '96 or '97 to your personnel in  
12 western Pennsylvania and how that was  
13 handled in communicating information  
14 of great importance to the  
15 Pennsylvania State Police. You never  
16 really have done the same type of  
17 investigation there that you have  
18 done in the case involving October of  
19 '98 and the incidents relating to Mr.  
20 Hikus and Mr. Ober have you?

21 A. There was an ongoing --- by  
22 the time I read the reports, there  
23 was an ongoing criminal investigation  
24 into the Stanton matter as well as an  
25 administrative investigation.

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1                   ATTORNEY BAILEY:  
2                   Object to the question  
3                   as non-responsive to the  
4                   respect --- object to the  
5                   response as non-responsive.

6                   BY ATTORNEY BAILEY:

7       Q.       Colonel, will you take a look  
8       at these, please. These are your  
9       notes.

10                  ATTORNEY BAILEY:

11                  Let the record show  
12                  it's two pages. We're going  
13                  to have them marked as Number  
14                  Two.

15                  (Deposition Exhibit Two  
16                  marked for  
17                  identification.)

18                  BY ATTORNEY BAILEY:

19       Q.       Do you have it in front of  
20       you, sir?

21       A.       Yes, I do.

22       Q.       The top of the page, does that  
23       say Rick Mascara and then a phone  
24       number, Pittsburgh SAC, May 20, '99  
25       and then your pager number?

1 A. Yes, sir.

2 Q. Now, sir, I confess that I've  
3 tried my best to decipher your notes  
4 and I've been able to read a good bit  
5 of it, but I need a little bit of  
6 help; okay? So I need you to help me  
7 with a few things; all right? The  
8 first sentence, if I understand it,  
9 says I was, can you read that  
10 sentence for me? I was advised by,  
11 I'm going to try to read it and you  
12 correct me if I get it wrong, it will  
13 go a little faster. I was advised by  
14 Lieutenant Colonel Hikus recently  
15 that we (PSP) were the subject of an  
16 FBI investigation into selling  
17 trooper positions. Is that what it  
18 says?

19 A. Yes, it does. That's partially  
20 what it says.

21 Q. All right. Now, I have a ---  
22 there's a parentheses here and I  
23 cannot read, all I can read is the  
24 word corruption. Can you read the  
25 rest of that?

1 A. Parentheses, for any other  
2 corruption allegation, end  
3 parentheses, since October '98, end  
4 parentheses.

5 Q. All right. Sir, here's my  
6 question on that particular. These  
7 are some paraphrases of notes of the  
8 things that you said to Rick; right?

9 A. Yes, sir.

10 Q. What did you mean by any other  
11 corruption allegation since October  
12 '98?

13 A. Into the higher ranks of the  
14 state police.

15 Q. You're asking the FBI agent to  
16 tell you whether there are any  
17 pending investigations into higher-  
18 ups in the Pennsylvania State Police;  
19 aren't you? Isn't that what you're  
20 doing there?

21 A. I think I was doing that in  
22 the context of since October '98  
23 with the ---

24 Q. Yes.

25 A. --- with the preface when I

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1 talked to the SAC, I think that I  
2 asked him or made a statement, if  
3 this is going to interfere with an  
4 FBI investigation, just don't talk to  
5 me or something like that.

6 Q. Well, what are you asking him  
7 for? I mean, what --- why are you  
8 asking him? Why are you asking the  
9 Federal Bureau of Investigation if  
10 there are --- do I have anything to  
11 fear? Is that what you're asking  
12 him, sir?

13 A. No.

14 Q. Then why are you doing this?  
15 Is that proper to do this?

16 A. Why am I asking if there is  
17 any other corruption investigation?

18 Q. Yes, sure. Yes, sir. Would  
19 you expect him to tell you?

20 A. Yes, I would unless they had  
21 strong probable cause to think that I  
22 was involved in it.

23 Q. All right.

24 A. Yes, I would expect them to  
25 tell me.

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1 Q. Okay, sir. Colonel Evanko,  
2 how long have you been a law  
3 enforcement officer?

4 A. As of today?

5 Q. Yes.

6 A. Just about 32 years.

7 Q. All right. Sir, you've used  
8 the term a couple of times unless  
9 there's good probable cause.  
10 Remember?

11 A. Yes.

12 Q. Now, I know legally what the  
13 definition of probable cause is, at  
14 least I try. I know it's a judgment  
15 call thing, you know, it's sort of  
16 like pass defense in football  
17 sometimes, you weigh things and  
18 whatnot. Well, what do you mean when  
19 you say to me that your expectation  
20 is unless there is good probable  
21 cause you should be told? Okay.  
22 Unless there's good probable cause.  
23 What does that mean?

24 A. I'm not sure I can explain it  
25 any better other than the --- I would

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1 expect that the SAC, if they had, for  
2 example, a wire intercept of me  
3 talking to somebody in an illegal  
4 fashion, that that would be strong  
5 probable cause and obviously I'm  
6 involved in something.

7 Q. Okay. So that would be the  
8 kind of probable cause that would  
9 implicate you personally?

10 A. Yes, sir.

11 Q. Okay. And you believe that if  
12 an FBI agent is sitting there with  
13 some reason to believe that maybe a  
14 group of people at the top, somebody  
15 at the top, okay, is maybe doing  
16 something wrong, that's not good  
17 probable cause, so they should tell  
18 you; right? Is that what you're  
19 telling me?

20 A. It's my understanding that the  
21 FBI agent is saying that high-ranking  
22 individuals in the state police were  
23 never mentioned.

24 Q. Well, that's like Monday  
25 morning quarterbacking though; isn't

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1 it?

2 A. I think it's the facts.

3 Q. Known after the investigation  
4 is completed; right?

5 A. We established that or it was  
6 established in the record after the  
7 investigation was completed.

8 Q. Well, further on your notes  
9 you've already told us that there was  
10 this concern that Ober had about who  
11 he should share this information  
12 with; right?

13 A. Point that out to me.

14 Q. Second page, sir, second page.  
15 No, no, second page, sir, you have it  
16 in your right hand. Yes, sir. Right  
17 hand, okay. I want to go through the  
18 lines with you now; okay? The first  
19 line has the number 1237. Do you see  
20 that?

21 A. Yes, sir.

22 Q. That's one. Count with me.  
23 One, two, three, four, five, and we  
24 have a blank line and then we have  
25 CI. Do you see that?

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1 A. Yes, sir.

2 Q. That's six and then we have a  
3 blank line and that's seven. Then we  
4 have eight and nine and it says, all  
5 I can read is nothing happened, dash.  
6 Now, do you want to read your  
7 handwriting for me, because maybe I  
8 misread it?

9 A. Ober concerned about going  
10 anywhere w/information.

11 Q. Okay. That's what you wanted  
12 me to show to you. I showed it to  
13 you. All right, sir. Now, let's go  
14 back to page one; okay? All right.  
15 Now, if you get into an investigation  
16 and start an investigation, and the  
17 investigation indicates that there's  
18 a possibility, not good probable  
19 cause, and I think you and I can  
20 understand the basic definition of  
21 what good probable cause means. Good  
22 probable cause means it would be a  
23 good basis to bring a charge; right?

24 A. Or to conduct an  
25 investigation.

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1 Q. Okay. Fair enough. Or to  
2 conduct an investigation. I would  
3 think the threshold to conduct an  
4 investigation, particularly in public  
5 corruption cases, was pretty low,  
6 particularly when it comes to  
7 democrats with the FBI. But that  
8 aside, let's say we're talking about  
9 a very, very, very low level. What  
10 would that level be to conduct an  
11 investigation?

12 A. Why would the FBI conduct an  
13 investigation you mean?

14 Q. Sure.

15 A. To get information that they  
16 need to see whether or not there's  
17 wrongdoing.

18 Q. I agree with you, sir. Right  
19 now, if we go back in our minds' eye  
20 prior to October 1998, we know that  
21 Len Bodack, a State Senator, had been  
22 mentioned. You agree that Bodack was  
23 mentioned in the earlier  
24 investigation phase prior to '97?

25 A. No, the first that I know of

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1 Bodack's name being mentioned by the  
2 FBI's --- by the FBI's confidential  
3 informant, was the intercept  
4 disclosed to Captain Ober on October  
5 21st.

6 Q. Well, if there were evidence  
7 that would indicate that the FBI knew  
8 about Bodack and his name had been  
9 mentioned earlier than October of  
10 '98, would it change any of your  
11 feelings about this?

12 A. In regards to what?

13 Q. Whether or not the FBI would  
14 have indicated to Mr. Ober a la Ober  
15 being concerned about where he goes  
16 with the information before October  
17 of 1998.

18 A. You lost me. I don't know  
19 what you mean by the question.

20 Q. You're telling us that when  
21 you're looking at the --- in your  
22 review of the information, that Mr.  
23 Bodack wasn't mentioned before  
24 October of '98 or the FBI didn't know  
25 about him before October of '98;

1 right?

2 A. That's the only time that I'm  
3 aware of.

4 Q. Okay. I asked you if the FBI  
5 did mention Mr. Bodack and was aware  
6 of Mr. Bodack before October of '98  
7 if that would change anything for  
8 you?

9 A. And I don't know what you mean  
10 by the question.

11 Q. Well, if the FBI had suspected  
12 Mr. Bodack were involved before  
13 October of '98 would that have  
14 affected their probable cause to  
15 investigate at all?

16 A. To investigate Bodack, I don't  
17 care who they investigate.

18 Q. Well, if Bodack had indicated  
19 that he was getting things out of the  
20 Governor's Office as Mr. Gigliatti  
21 did, for example, do you think that  
22 should have affected the FBI's  
23 approach to this investigation?

24 A. In regards to who they told  
25 or ----?

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1 Q. Sure. Who Bodack was  
2 contacting, who he may have been  
3 trading votes for influence with.

4 A. I have no idea.

5 Q. Well, did Mr. Williams or Mr.  
6 Wertz (phonetic) check that out? Do  
7 you know if they did?

8 A. Checked Bodack?

9 Q. Yes, the pre-October '98  
10 aspect of this thing.

11 A. It's my understanding that  
12 when the FBI advised Captain Ober of  
13 this case that it was unfounded,  
14 there was nothing to it except,  
15 quote, a bad trooper. And that the  
16 case was over.

17 Q. The case was over when the FBI  
18 contacted Ober?

19 A. Yes.

20 Q. Okay.

21 A. And that's late September,  
22 early October of 1998 or --- no, it's  
23 two weeks prior to May 12th that  
24 Lieutenant Colonel Hikus told me  
25 Captain Ober told him that the FBI

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1 had called and told him that the  
2 investigation was over or unfounded  
3 and that the most they could find was  
4 that we had a bad trooper or  
5 something like that.

6 Q. Okay. Let's clarify this in  
7 fairness to you. You misspoke or  
8 maybe I misunderstood you. The FBI  
9 had not closed the case in October of  
10 '98. That actually occurred later.  
11 It was a live investigation until  
12 about two weeks before you were told  
13 in May; right?

14 A. That's correct.

15 Q. That's what you meant to say?

16 A. That's what I said.

17 Q. Yes. Okay. Well, I  
18 misunderstood you.

19 A. That's what I said in the  
20 second part of that.

21 Q. Yes. I think you cleared it  
22 up. You cleared it up. There was  
23 some confusion there. That's fine.  
24 It's okay. Now, let's go back to  
25 this document here. And go back to

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1 page one. These are your notes and  
2 it's Evanko Two. Now, it says, after  
3 that first little paragraph there, it  
4 says, ASAC. Is that what it says,  
5 ASAC agent? What does that ---?

6 A. Assistant special agent in  
7 charge.

8 Q. And what's the name?

9 A. I can't read it.

10 Q. One and a half years is all I  
11 can make out. Is that --- do you  
12 agree that that's what it says?

13 A. There is a word before that  
14 and then after the one and a half  
15 years it appears to say Phoenix  
16 Division.

17 Q. What's that mean?

18 A. I don't know.

19 Q. Well, is that something the  
20 FBI is saying to you or something  
21 you're saying to the FBI?

22 A. I don't recall anything about  
23 that.

24 Q. It sounds pretty exotic to me,  
25 but who knows how important Stanton

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1 is. Phoenix Division. Now, then  
2 there's 1200. What's the  
3 significance of the number 1200?

4 A. I think that was the time that  
5 I called.

6 Q. And then it says out of where,  
7 which office. Who's saying that?  
8 That's Mascara asking you where this  
9 is coming from. He didn't know  
10 anything about it; right?

11 A. When I posed the question to  
12 him about an investigation into  
13 higher-ups of the state police, and  
14 he's saying, out of what office, out  
15 of where, which office?

16 Q. Do you remember what you said  
17 to him to spark that response, what  
18 you may have said, what words you  
19 used?

20 A. I would have asked about any  
21 investigation, any corruption  
22 investigation, probably in the state  
23 police or into the higher ranks of  
24 the state police. That's probably  
25 what that means.

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1 Q. And then the next line is got  
2 to plead ignorance?

3 A. Yes.

4 Q. In other words, he didn't know  
5 about what you're --- he didn't know  
6 what you were talking about?

7 A. Yes.

8 Q. Okay. The third line, I'm  
9 sorry, I can't read that. I see the  
10 word seems and the word to.

11 A. Sometime ago seems to  
12 remember.

13 Q. Okay. Then what?

14 A. And the next line is was a  
15 case against a specific trooper.

16 Q. Okay. So he seemed to  
17 remember something about a case  
18 against a specific trooper.

19 A. Yes, sir.

20 Q. So again, if there were  
21 indications that Mr. Bodack, let's  
22 say, had been involved or had come  
23 up, prior to October '98, that would  
24 be news to you at this juncture here;  
25 right? And Rick didn't seem to

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1 indicate that during this May 20th  
2 conversation; is that correct?

3 A. That I would not have had any  
4 knowledge about the name Bodack, I  
5 wouldn't have had that until after I  
6 reviewed the administrative inquiry  
7 and read that in the transcript of  
8 the recording that was made in  
9 October.

10 Q. Okay. Now, what's that next  
11 line?

12 A. I don't know what the first  
13 word is, but it appears to be after  
14 that w/David.

15 Q. Who's David?

16 A. I don't recall.

17 Q. Young?

18 A. I don't know who it is.

19 Q. They're your notes. You don't  
20 know who David is?

21 A. No, I don't know what that  
22 means.

23 Q. You see there's a little  
24 squiggly line there?

25 A. Yes, I do.

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1 Q. What's underneath that?

2 A. I probably started to write  
3 something and stopped and crossed it  
4 off.

5 Q. All right. Go down to  
6 paragraph two. There's a number two;  
7 right?

8 A. Yes, sir.

9 Q. As I read that it says, was I,  
10 then there's --- is that the word a?

11 A. A.

12 Q. Subject of an investigation or  
13 any of lieutenant colonels. Do you  
14 remember that?

15 A. Yes.

16 Q. Do you see that? Now, I  
17 might be mistaken, but did Mr. Hikus  
18 tell you that there was a possibility  
19 of a lieutenant colonel or a colonel?  
20 Do you remember?

21 A. Lieutenant Colonel Hikus on  
22 May 3rd told me that the, quote,  
23 term, end quote, colonel was used.

24 Q. Where'd you get lieutenant  
25 colonel by the 20th? Who did you

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1 talk to and what did you learn by  
2 then that caused you specifically to  
3 ask Rick, L, right there, L. colonel  
4 as opposed to colonel then. Where'd  
5 you get that?

6 A. I'm thinking from what  
7 Lieutenant Colonel Hikus and Captain  
8 Ober told me that two high-ranking  
9 officials, in high ranking there are  
10 two potentially lieutenant colonels.

11 Q. Because you're a colonel, it  
12 wouldn't include you; right?

13 A. I didn't know that ---.

14 Q. There's only one colonel. I'm  
15 sorry. There's only one colonel.

16 A. And your question is?

17 Q. That colonel, it wouldn't have  
18 included you. You knew that you  
19 hadn't been involved in this thing;  
20 right?

21 A. I knew I wasn't involved, yes.

22 Q. Okay.

23 ATTORNEY BAILEY:

24 Let me know a minute  
25 warning.

1       BY ATTORNEY BAILEY:

2       Q.        Okay. So sir, as you sit here  
3       today, your best recollection is that  
4       you think that came from Mr. Hikus or  
5       conversations with Mr. Hikus?

6       A.        The use of the term colonel?

7       Q.        Yes, I'm just looking at ---.

8       A.        I know it came from Lieutenant  
9       Colonel Hikus on the 13th --- May  
10      12th.

11      Q.        Okay. So on May 13th Colonel  
12      Hikus had told you that it was the  
13      term lieutenant colonel?

14      A.        No ---.

15      Q.        Go ahead.

16      A.        On May 12th when they briefed  
17      me there was no discussion at all  
18      about a rank.

19      Q.        Okay.

20      A.        It struck me as odd on May  
21      13th that he would come to me and say  
22      the term, not the rank, but the term  
23      colonel was used.

24      Q.        Okay. Now, he gave a  
25      statement, Mr. Hikus did.

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1                           VIDEOGRAPHER:  
2                           Excuse me, Mr. Bailey,  
3                           may we suspend for a moment?

4                           ATTORNEY BAILEY:  
5                           Yes.

6                           VIDEOGRAPHER:  
7                           It's now 11:30, March  
8                           27th, 2002. We are going to  
9                           suspend and change tapes on  
10                          the deposition of Mr. Evanko.

11                         SHORT BREAK TAKEN

12                         MR. SOLOMON:  
13                         It's 11:36 a.m., tape  
14                         two, back on the record.

15                         VIDEOGRAPHER:  
16                         The time is 11:38 a.m.,  
17                         March 27th, 2002. We are  
18                         getting the second tape of Mr.  
19                         Evanko.

20                         BY ATTORNEY BAILEY:  
21                         Q.           Mr. Evanko, did you hold up  
22                         the criminal investigation into Mr.  
23                         Stanton until you investigated the  
24                         facts and circumstances? I mean,  
25                         that's the way you term it and

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1 actually we look at it differently.  
2 There's an honest difference of  
3 opinion there. But the facts and  
4 circumstances of the October 5th, '98  
5 FBI inquiry. Do you understand that  
6 question?

7 A. I believe I understand it. By  
8 the time I got the administrative  
9 inquiry, the investigation both  
10 criminally and administratively into  
11 Stanton was ongoing. But no, I did  
12 not order ---.

13 Q. But you say the --- you're  
14 talking about the results of your  
15 investigation into Mr. Ober.

16 A. The results of my  
17 administrative inquiry about the  
18 incident with Lieutenant Colonel  
19 Hikus and Captain Ober and the FBI.

20 Q. Okay. So your testimony is  
21 you didn't hold anything up and that  
22 the criminal investigation into Mr.  
23 Stanton and the administrative  
24 investigation into Mr. Stanton  
25 proceeded on a normal basis and a

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1 normal schedule? That's what you're  
2 telling us; right?

3 A. Yes, sir.

4 Q. At least as known to you?

5 A. Yes, sir.

6 Q. Okay. Can we go back to  
7 Evanko Two? Now, I had been asking  
8 you about this term lieutenant  
9 colonel. Do you see that there?

10 A. Yes, sir.

11 Q. Now, in response to earlier  
12 questions I had indicated to you or I  
13 had asked you whether you knew Mr.  
14 Bodack had been mentioned prior to  
15 that --- what that CI or Bridges, I  
16 think you had indicated that it was  
17 Bridges, had mentioned in October of  
18 '98; right? To the best of your  
19 knowledge the first time Bodack was  
20 mentioned was October of '98?

21 A. To the best of my knowledge  
22 the confidential informant of the FBI  
23 mentioned the name Bodack in October  
24 of '98.

25 Q. Okay. If I represented to you

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1 that I think that Bodack was  
2 mentioned as early as the beginning  
3 of 1998 in FBI documents would that  
4 surprise you?

5 A. I wouldn't know that.

6 Q. And you wouldn't have any way  
7 of knowing it?

8 A. No, sir.

9 Q. Because you didn't ask the FBI  
10 the extent of the public corruption  
11 they suspected, what connections they  
12 suspected; right?

13 A. No, I just took what  
14 Lieutenant Colonel Hikus and Captain  
15 Ober told me that the FBI  
16 investigation was closed, unfounded  
17 and the most they could find was a  
18 bad trooper.

19 Q. Well, Colonel Coury told us  
20 that the FBI indicated something to  
21 him and he'd want to question them on  
22 what's this about, you know, what are  
23 the details, and how do you think the  
24 state police is involved and who do  
25 you think is involved, et cetera.

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1 Now, in fairness to Mr. Coury, that  
2 was what he thought his methodology  
3 might be, I believe, when I asked him  
4 that question. And in fairness to  
5 him it's the way he felt it should  
6 have been approached by Captain Ober.  
7 Now, with that characterization,  
8 that's my recollection, do you  
9 remember when he testified to that  
10 during his deposition?

11 A. No, I do not.

12 Q. Okay. Well, then I'll just  
13 let you go on that question, because  
14 you don't remember that. Now, on  
15 line two it says was I a subject of  
16 an investigation or any of lieutenant  
17 colonels. So what you're asking Mr.  
18 Mascara is, you know, was I or any of  
19 my lieutenant colonels the subject of  
20 an investigation.

21 A. Yes.

22 Q. Okay. And he said no?

23 A. Yes.

24 Q. Did you ask him if you should  
25 have been subject to an

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1 investigation?

2 A. No, I did not.

3 Q. Did you ever ask him if the  
4 FBI ever had any reasons to believe  
5 that you or some of your lieutenant  
6 colonels could have been involved?

7 A. In getting back to the  
8 question before that where I said ---  
9 two questions before that where I  
10 said ---.

11 Q. You go back, sir, it's fine.  
12 You go right ahead.

13 A. Whatever it was. He would  
14 have gotten back when it was, was I  
15 the subject of an investigation or  
16 lieutenant colonel. I'm sure your  
17 name was never mentioned. If I were  
18 I would have been told is what he  
19 told me.

20 Q. Okay.

21 A. If you were I would have been  
22 told.

23 Q. Forgive me. I'm not laughing  
24 at you.

25 A. I'm sure your name was never

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1 mentioned.

2 Q. I'm not laughing at you. I'm  
3 not, that laughter --- let me tell  
4 you why I laughed because I apologize  
5 to you. It was not at you and I ---  
6 that may have come across to you as  
7 rude and I don't --- I think you know  
8 me enough by now to know that that's  
9 one thing I try not to do, I try hard  
10 not to be rude.

11 The reason I laughed is  
12 because of all of the testimony I've  
13 heard from so many people about how  
14 you do an investigation and here's my  
15 question. You're absolutely certain  
16 that Rick Mascara said to you that if  
17 your name had been mentioned he would  
18 have told you?

19 A. Yes, I am.

20 Q. Isn't that improper?

21 A. Say it again.

22 Q. Sir, if we're going to do  
23 public corruption investigations in  
24 the United States and we put  
25 friendship as law enforcement

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1 officers above the integrity of an  
2 investigation, I may not be  
3 understanding it properly, that's why  
4 I'm asking you this, how are we ever  
5 going to get rid of public corruption  
6 if we ever can?

7 ATTORNEY CHRISTIE:

8 Counsel, I object.

9 Maybe you're not understanding  
10 properly because if you're  
11 basing --- are you basing that  
12 question on the excerpt that  
13 the Commissioner just read  
14 from there saying that if you  
15 were, you, the Commissioner,  
16 was the subject of an  
17 investigation, I would have  
18 been told. Who's the I that  
19 Mascara's talking about?

20 ATTORNEY BAILEY:

21 Counsel, you have ---.

22 ATTORNEY CHRISTIE:

23 Well, that's where I  
24 think you may be misleading.

25 ATTORNEY BAILEY:

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1                   You have the  
2                   Commissioner. He can answer.  
3                   You're trying to testify and  
4                   obviously ---.

5                   ATTORNEY CHRISTIE:

6                   No, you're trying to  
7                   testify, Counsel.

8                   ATTORNEY BAILEY:

9                   Yes, you are. You  
10                  know, please stop what you're  
11                  doing. If you have an  
12                  objection, state it for the  
13                  record.

14                  ATTORNEY CHRISTIE:

15                  I just did.

16                  ATTORNEY BAILEY:

17                  And let me go back.

18                  BY ATTORNEY BAILEY:

19                  Q.         Are you telling me ---.

20                  ATTORNEY BAILEY:

21                  Move to strike.

22                  BY ATTORNEY BAILEY:

23                  Q.         Are you telling me, sir, that  
24                  Mr. Mascara is saying in response to  
25                  your inquiry here that if your name

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1 had been mentioned he would have told  
2 you?

3 A. That's what he told me. And  
4 it was prefaced with my comments to  
5 him when we first started to talk  
6 that if this was --- if my questions  
7 were going to interfere with any  
8 investigation, don't talk to me,  
9 don't say anything or something along  
10 those lines.

11 Q. Yes. But he said if your name  
12 --- but his response to that, and I  
13 think that's admirable of you to say  
14 that to him, I have no problem with  
15 that. But his response to that is,  
16 and this is what I'm asking you  
17 about. I'm asking you whether this  
18 is proper ethics for a law  
19 enforcement official to say, no, if  
20 your name had been mentioned I would  
21 have told you. That's not proper; is  
22 it? I mean, if he received  
23 information that you had done  
24 something wrong he should put his law  
25 enforcement responsibilities ahead of

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1 his loyalty to you; shouldn't he?

2 A. You lost me, but I agree in  
3 concept that the issue of loyalty  
4 should not be involved in an  
5 investigative decision.

6 Q. Well, then why is he telling  
7 you if your name had been mentioned  
8 that he would tell you? I take that  
9 to mean that he would have put  
10 loyalty to you. That's what I may  
11 not be --- that's why I'm asking  
12 about this conversation.

13 A. I don't know what was in his  
14 --- I don't know what he meant by  
15 that. I don't know what was in his  
16 mind. I can just tell those were the  
17 words that he used.

18 Q. Why did you write them down?  
19 Why was that important to you?

20 A. If you were, I would have been  
21 told. I'm sure your name was never  
22 mentioned.

23 BRIEF INTERRUPTION

24 BY ATTORNEY BAILEY:

25 Q. I'm sure your name was never

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1 mentioned. Well, did he say that  
2 about lieutenant colonels or he said  
3 that about your name. Remember I  
4 asked you there's only one colonel;  
5 right?

6 A. That's correct.

7 Q. And that's the commissioner,  
8 that's the way the Pennsylvania State  
9 Police are structured. And at this  
10 time the commissioner is you. You're  
11 the colonel. So when he says your  
12 name was never mentioned, you took  
13 that to mean by either rank or name;  
14 is that fair to say?

15 A. I think that's fair to say.

16 Q. Sure, sir. But he doesn't say  
17 lieutenant colonels. Did you then  
18 follow on and say lieutenant colonels  
19 or did you take it that he meant  
20 lieutenant colonels also?

21 A. I think he meant lieutenant  
22 colonels because I prefaced that, was  
23 I a subject of an investigation or  
24 any of lieutenant colonels.

25 Q. But he says if you were

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1 mentioned I would have been told.  
2 You were never mentioned, sure that  
3 you were never mentioned. You think  
4 that he's including lieutenant  
5 colonels; right?

6 A. Yes, I do.

7 Q. But then that isn't correct;  
8 is it? That isn't correct because  
9 there was a tape on October 13th,  
10 1998 that, in fact, used, at least  
11 used the term; am I correct?

12 A. Yes, there is. But I don't  
13 know what credence the FBI agent or  
14 the FBI office gave to that term that  
15 was used by the applicant of the job.

16 Q. But you know that Captain Ober  
17 was concerned about who to tell  
18 because he was concerned enough about  
19 it that he brought it up and the FBI  
20 was concerned enough about it for  
21 some reason because Rick checked it  
22 out and told you that Ober had  
23 expressed concern; didn't he? And  
24 that's on page two; right?

25 A. Yes, he told me that ---

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1 Q. Yes.

2 A. --- Ober was concerned about  
3 going anywhere with the information.

4 Q. Absolutely. Now, does that  
5 mean that you asked Rick what Ober  
6 said? I mean, you said this wasn't  
7 into Ober in facts and circumstances  
8 and that's fine. But did you ask  
9 Rick if Ober ever mentioned what he  
10 was going to do with the information  
11 or anything like that?

12 A. No, I didn't.

13 Q. Then why did you know --- do  
14 you know why Rick would then think it  
15 important enough to bring it up and  
16 you think it important enough to mark  
17 it down on these sheets?

18 A. I don't know why he brought it  
19 up. But it was what we discussed and  
20 I marked it down.

21 Q. All right, sir. Thank you.  
22 Now, going back, we're still on page  
23 one; okay? Now, I'm the subject of  
24 an investigation. I was never  
25 mentioned. Then it goes, I can't

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1 read that. No, is that what that is  
2 on the third line there?

3 A. I think that's a no.

4 Q. No, dash I, read it, I cannot  
5 read it, sir. I'm sorry.

6 A. I remotely remember something  
7 about an investigation of local  
8 municipalities and testing.

9 Q. Okay. Do you know whether  
10 that was after Rick called you back?

11 A. No, that was the twelve  
12 o'clock phone call, phone  
13 conversation.

14 Q. So Rick really is, without  
15 knowing anything about the  
16 investigation, carte blanche, saying  
17 to you, without knowing what's in the  
18 investigation, which he says he's  
19 pleading ignorance about, saying to  
20 you, if you had been mentioned, I'd  
21 have told you? That's just blind  
22 loyalty; isn't it, Colonel Evanko?

23 A. I don't know what --- I don't  
24 know what was in his mind when he  
25 made that statement.

1 Q. You said he was your friend.

2 A. Yes, he was.

3 Q. How long have you guys been  
4 friends?

5 A. Probably since he went to  
6 Pittsburgh and I'm not sure how long  
7 that would have been.

8 Q. Did you ever say you were  
9 going to have the agent transferred?  
10 Did you ever say you were going to  
11 have Mr. Cush transferred, sir?

12 A. No.

13 Q. Did you ever say that to  
14 anybody?

15 A. No.

16 Q. Colonel Hikus is lying about  
17 that; right?

18 A. I never said that to Colonel  
19 Hikus or to anybody else.

20 Q. Do you believe that Colonel  
21 Hikus lied about that or are you  
22 saying that he, and if he didn't lie  
23 about it, he made an error? Is that  
24 what you're saying?

25 A. One of the two.

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1 Q. One of the two. You feel very  
2 strongly about that; don't you?

3 A. Yes, I do.

4 Q. Did you ever say you were  
5 going to call Mr. Freeh?

6 A. Yes, I did.

7 Q. But you didn't?

8 A. No, I did not.

9 Q. And you're testifying here  
10 today you never placed a call to Mr.  
11 Freeh?

12 A. That is correct.

13 Q. All right. Now, sir, after  
14 that, do you see you have no and you  
15 have that sentence following it  
16 there? But the next sentence says,  
17 what are you saying there?

18 A. Not familiar with this, get  
19 back to you.

20 Q. Okay. When you talked to Rick  
21 do you remember if you were angry?  
22 Were you upset? Did you tell him  
23 that you were upset or anything like  
24 that? Anything like that?

25 A. I don't think I was angry. I

1 think I was just calling him to talk  
2 to him about this.

3 Q. Remember I had asked you about  
4 the length of time in between, some  
5 questions. I want just a couple  
6 little follow-up questions on the  
7 length of time. What occurs between  
8 March 12 and --- or I'm sorry, sir.  
9 I'm sorry. May 12 and May 20, I'm  
10 sorry. May 12 and May 20. On the  
11 13th, that was the day that you had  
12 --- there was another meeting with  
13 Colonel Hikus and you had Colonel  
14 Coury come in; right? Just a second.

15 Colonel, let me go back and  
16 unjumble that. It was very awkward  
17 and I apologize for that. We know  
18 that on May 12th, 1999 you had the  
19 meeting with Colonel Hikus. They  
20 requested it, Colonel Hikus and  
21 Captain Ober. And they initially  
22 informed you about the FBI probe;  
23 correct?

24 A. That is correct.

25 Q. All right. And there was

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1 another meeting which occurred on May  
2 13th; am I correct? With Colonel  
3 Hikus?

4 A. It was a 10 to 15-second  
5 conversation.

6 Q. Well, let me tell you why I'm  
7 asking, because I think there was  
8 later a statement asked of Colonel  
9 Coury to give a statement about what  
10 was discussed with Colonel Hikus and  
11 certainly it took a lot more than 10  
12 or 15 seconds, and I'm trying to sort  
13 this out. Let me go back again.  
14 Let's try to reconstruct it again.  
15 I'm not trying to trip you up. I  
16 want to try to get the facts  
17 sequenced.

18 It's May 12, 1999. Colonel  
19 Hikus and Captain Ober have a meeting  
20 with you and they request an  
21 opportunity to speak with you, and at  
22 that time they tell you about this  
23 FBI probe. You admitted Colonel  
24 Hikus says you were agitated, you  
25 have admitted that you were angry and

1 upset. And you've given us some of  
2 the reasons. My understanding is  
3 that at the May 12, 1999 meeting you  
4 and Lieutenant Colonel Hikus and  
5 Captain Ober were the only three  
6 there. Am I correct?

7 A. For the first meeting, yes,  
8 sir.

9 Q. All right. There was another  
10 meeting on the 12th then?

11 A. Yes, sir.

12 Q. All right. Now, I'm getting  
13 straightened out. The second meeting  
14 on the 12th though, Captain Ober was  
15 not there?

16 A. That is correct.

17 Q. Okay. And in the second  
18 meeting on the 12th, it was you,  
19 Lieutenant Colonel Hikus, and  
20 Lieutenant Colonel Coury?

21 A. That is correct.

22 Q. Now, Lieutenant Colonel  
23 Wescott was not at that meeting;  
24 right?

25 A. No, he wasn't.

1 Q. Now, were there any other  
2 meetings that day about this matter  
3 that you had where Lieutenant Colonel  
4 Hikus was present?

5 A. There wasn't any other  
6 meetings that day, no.

7 Q. At all about this subject; is  
8 that correct?

9 A. That's correct.

10 Q. All right. The next day, May  
11 the 13th, 1999, you had another  
12 meeting about this subject?

13 A. Yes, sir.

14 Q. Now, at that meeting,  
15 Lieutenant Colonel Hikus was there;  
16 correct?

17 A. Yes, sir.

18 Q. Lieutenant Colonel Coury was  
19 there?

20 A. Yes, sir.

21 Q. And Lieutenant Colonel Wescott  
22 was there?

23 A. Yes, sir.

24 Q. Who else in addition to those  
25 people were there?

1 A. It was just the four of us.

2 Q. All right. Where did that  
3 meeting take place?

4 A. I believe that was at the  
5 academy.

6 Q. All right. Sir, did you take  
7 any notes or make any recordings of  
8 that meeting?

9 A. No, I did not.

10 Q. All right. Now, do you know  
11 whether any of the other gentlemen  
12 there made any recordings or notes?

13 A. I don't believe so.

14 Q. And certainly that wasn't a  
15 15-second meeting?

16 A. I'm not sure. There was  
17 another meeting with Lieutenant  
18 Colonel Hikus and myself where he  
19 would then tell me, and I think we  
20 were still at headquarters, colonel,  
21 the term colonel, was used.

22 Q. And in --- I'm sorry, sir.

23 A. In this.

24 Q. Okay. Now, you were concerned  
25 about that because that impacted you

1 personally?

2 A. That impacted --- directly  
3 impacted me.

4 Q. And that's certainly  
5 understandable. Now, my  
6 understanding is, if I recollect  
7 correctly, that when Mr. Hikus gave  
8 his statement to Mr. Williams during  
9 the investigation that you ordered,  
10 and we're going to go to that very,  
11 very shortly, that Mr. Hikus  
12 indicated to Mr. Williams and Mr.  
13 Wertz that indeed Mr. Ober had used  
14 the word colonel. Do you remember  
15 that?

16 A. No, I do not.

17 Q. Okay. So you don't know  
18 whether he --- how Mr. Hikus, and I  
19 may be wrong in my characterization  
20 by the way, but I'll double-check it.

21 A. In their briefing to me, no,  
22 they did not.

23 Q. Okay.

24 A. But I took it that Lieutenant  
25 Colonel Hikus got that information

1 from Captain Ober.

2 Q. That's fine. And I want to  
3 also ask you, you are aware that when  
4 Mr. Williams and Mr. Wertz  
5 interviewed Mr. Hikus, Lieutenant  
6 Colonel Hikus, that they taped that  
7 interview?

8 A. Yes, sir.

9 Q. Now, you have those tapes;  
10 right?

11 A. I do not, but ---.

12 Q. Your attorneys have them?

13 A. Yes.

14 Q. You know that we've requested  
15 those tapes and an opportunity to  
16 listen to them?

17 A. I don't know.

18 Q. And do you know, do you have  
19 the tapes of the FBI, that the FBI  
20 turned over, at least what they did  
21 turn over to your people? Do you  
22 know whether or not your staff has  
23 that?

24 A. I don't know whether we have  
25 those tapes or not.

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1 Q. Okay. Have you ever heard any  
2 of the tapes in this matter, Colonel?

3 A. No, sir.

4 Q. Have you ever read any of the  
5 statements in this matter?

6 A. Yes, I have.

7 Q. You've read Lieutenant Colonel  
8 Coury's statements; is that right?

9 A. Yes, sir.

10 Q. Well, before we get to those I  
11 want to finish up some questions on  
12 this exhibit and then what I'm going  
13 to do is I'm going to ask you about  
14 that investigation; okay? The  
15 investigation that you ordered by  
16 Captain Williams and Lieutenant ---  
17 I'm sorry, Major Williams and Major  
18 Wertz. I'll try to get these ranks  
19 straightened out. I'm sorry. I'm  
20 doing my best with them. Okay.  
21 Getting back to you. That's the end  
22 of the first page. Do you agree with  
23 me?

24 A. Yes, sir.

25 Q. Okay. Let's go to the next

1 page. What does 1237 mean?

2 A. 12:37. It's the time.

3 Q. Okay. That's a time thing.

4 Okay. Now, up above there it says  
5 John somebody or other ASAC. What's  
6 that?

7 A. Maybe it was the ASAC of the  
8 Pittsburgh office.

9 Q. Okay. Now, it says probably  
10 wasn't, what's that say?

11 A. Briefed.

12 Q. So that's Rick telling you  
13 that he probably wasn't briefed?

14 A. Yes.

15 Q. Sir, do you know whether Cуш  
16 and/or Suhy didn't trust the  
17 friendship between you and Rick?

18 A. I have no idea. I don't even  
19 know if they really knew each other.

20 Q. And then this sentence here is  
21 didn't get here until June. What's  
22 that mean?

23 A. I think it means that Mascara  
24 wasn't assigned to the Pittsburgh  
25 office until June.

1 Q. Well, did he ever indicate  
2 that when he came into the office  
3 that he reviewed active files? My  
4 understanding is that's usually done  
5 and I just want to know if he ever  
6 mentioned that?

7 A. No, he never mentioned that.

8 Q. What if Len Bodack had been  
9 mentioned say on February 20th, 1998  
10 in the FBI investigation? Do you  
11 think Mr. --- the State Senator,  
12 talking about favors in the  
13 Governor's Office, do you know  
14 whether Mr. Mascara would know  
15 anything about that?

16 A. I don't know.

17 Q. Second line under probably  
18 wasn't briefed. First, something or  
19 other, January '97. What's that say?

20 A. First surfaced, I guess that's  
21 January or June, I don't know. I  
22 think it's January '97.

23 Q. Well, your word June up in the  
24 first line, I looked at that, because  
25 I was interested in that date, the

1 word June up in the first line,  
2 J-U-N-E is written out and then  
3 J-A-N, it looks to me like January  
4 '97.

5 A. It is probably January.

6 Q. Okay. It says, now, you bear  
7 with me, if I can read this  
8 correctly, IAD notified. And then it  
9 says, if I'm reading it correctly,  
10 Captain Ober and a dash.

11 A. Yes.

12 Q. Now, you knew that Captain  
13 Ober hadn't been notified in 1998  
14 until October '98; right?

15 A. That's my understanding, yes.

16 Q. And it says first notified or  
17 something January --- it was first  
18 surfaced January '97, IAD notified.

19 A. Yes.

20 Q. Well, did you ask Rick, who'd  
21 you tell in IAD in '97?

22 A. No, I didn't.

23 Q. Sir, can I ask why? I mean,  
24 let me give you an offer why I'm  
25 asking you this to give you fairness

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1 to respond as completely as you can.  
2 I understand you're upset about the  
3 events of being notified in this,  
4 personally and as a professional and  
5 as a responsible public official. I  
6 understand that. Here is an FBI  
7 agent who's a friend and also the  
8 special agent in charge and he says  
9 that it first surfaces in January  
10 '97, IAD is notified. Now, doggone  
11 it, Colonel, you didn't know it then.  
12 Nobody told you then. And yet Ober  
13 gets told in '98, you're  
14 investigating the circumstances under  
15 which he was told and you've already  
16 told us your primary concern was  
17 Hikus and what he had done. We  
18 already know that. But you're  
19 looking at the facts and  
20 circumstances.

21 Now, bear in mind, sir, that  
22 the facts and circumstances are  
23 these. No matter what Ober did or  
24 what Ober knew, we know that Hikus  
25 didn't know until the 1st of October

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1 of 1998. And we know that you're  
2 upset because you weren't told and  
3 the chain of command may have been  
4 circumvented in your view. Why  
5 didn't you ask Rick? Here's my  
6 question. That's where I'm going.  
7 That's what I'd like to know about.  
8 Why wouldn't you ask Rick about the  
9 events of how the FBI notified IAD in  
10 '97 and why you didn't know? Can you  
11 explain why you wouldn't ask him  
12 that?

13 A. No, I was just listening to  
14 his response to my initial questions.

15 Q. Okay. Now, here it says,  
16 after IAD notified, you didn't ask  
17 him any questions. It says, Captain  
18 Ober, then it says, dash, I think it  
19 says, I was something aside it looks  
20 like to me. What is that? What does  
21 that say?

22 A. It was set aside.

23 Q. Okay. Until October '98. Do  
24 you know why it was set aside?

25 A. No, I don't.

1 Q. Would you find it odd that it  
2 was set aside if indeed Senator  
3 Bodack was mentioned as early, if he  
4 was, at least as early, if not  
5 before, February '98?

6 A. I wouldn't have any idea why  
7 the FBI set it aside.

8 Q. Did you ever ask them why they  
9 set it aside?

10 A. No.

11 Q. Did you ever ask them why they  
12 took a run at it, these are the words  
13 here, your words. Did you ever ask  
14 them why they took a run at it?

15 A. It was set aside until October  
16 '98, took a run at it, political  
17 corruption case. I think from  
18 reading the statement of Cush, he had  
19 a new supervisor that was helping  
20 with his case load.

21 Q. Suhy, is that Mr. Suhy?

22 A. I believe it was probably Suhy  
23 who told him to get on top of those  
24 cases.

25 Q. Okay. Then it says, political

1 corruption case, then something,  
2 looks like to influence SP, but I  
3 can't read it.

4 A. Position I think. To  
5 influence SP positions, dash, a  
6 Trooper Stanton.

7 Q. Well, what did he mean by  
8 position?

9 A. I don't know.

10 Q. Well, Stanton is a trooper;  
11 right?

12 A. Yes.

13 Q. In fact, he had been a trooper  
14 under Mr. Conley; right?

15 A. Yes, he was assigned to the  
16 same troop.

17 Q. Yes, he was. He was under Mr.  
18 Conley before Mr. Conley came up and  
19 took over BPR; right?

20 A. He was one of the troopers  
21 that were assigned to that troop.

22 Q. Sir, he could have been one of  
23 thousands, millions. He was under  
24 the command of Major Conley before  
25 Major Conley came up and assumed the

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1 command position at BPR. Am I  
2 correct?

3 A. Yes, you are.

4 Q. Now, do you know why this word  
5 position to influence state police  
6 positions, why you put that verbiage  
7 down?

8 A. It would be what the SAC told  
9 me and I can speculate as to why he  
10 said that.

11 Q. No, I won't ask you to  
12 speculate. If you want to tell me  
13 why --- I'm going to ask you a whole  
14 lot of questions about that. I view  
15 that as a very important sentence.  
16 I'm going to ask you a lot of  
17 questions about it, I admit. I'll  
18 tell you where maybe we can save some  
19 time. It just seems to me it would  
20 be common sense that a trooper out  
21 there, is it Troop A? Troop B?  
22 Whatever it was. I know where he was  
23 stationed also, but anyway, out there  
24 in southwestern Pennsylvania. But at  
25 first glance a trooper out there is

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1 not going to be able to influence  
2 what happens at the academy without  
3 some kind of help or conspiracy,  
4 somebody to back him up. That's only  
5 common sense. Would you agree with  
6 that?

7 A. It would have to be not only  
8 the academy, but it would have to be  
9 systemic in the organization.

10 Q. And systemic would mean take  
11 one or more people and like go up  
12 through the organization?

13 A. It would have to involve  
14 psychologists, the academy personnel,  
15 background investigators, and  
16 probably other people.

17 BRIEF INTERRUPTION

18 BY ATTORNEY BAILEY:

19 Q. But haven't you played a role  
20 in helping relatives or sons of state  
21 troopers become state troopers? I  
22 mean, have you played any role in any  
23 of that ever?

24 A. What do you mean?

25 Q. Either trying to influence or

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1 recommend or anything like that? I  
2 mean, I would understand you have a  
3 large organization, you get a lot of  
4 requests. I'm not indicating it's  
5 bad or wrong, but I mean, have you  
6 ever recommended at least or done  
7 anything at least in trying to help,  
8 let's say, the son of a state trooper  
9 become a state trooper?

10 A. I don't remember any.

11 Q. You don't remember. Okay. So  
12 when you say that, and I'm asking  
13 this question about position to  
14 influence SP positions or state  
15 police positions, you would agree  
16 with me that Stanton, it's not the  
17 kind of thing that Stanton out there  
18 as a trooper in western Pennsylvania  
19 can do on his own, it would involve  
20 the confluence of a lot of people and  
21 events to make it happen. That's  
22 what you're saying; right?

23 A. I'm saying that and I'm saying  
24 that Trooper Stanton was saying that  
25 he could influence positions of

1 getting an applicant into the  
2 academy. That's what I think that  
3 means, Trooper Stanton said he was in  
4 a position to influence state police  
5 positions. That's what I think that  
6 means.

7 Q. Okay. Now, and thank God as  
8 it turned out that was nonsense;  
9 right?

10 A. Right.

11 Q. It wasn't true; correct?

12 A. It was not true.

13 Q. But how do you know that at  
14 the time when this thing starts if  
15 somebody says something like that,  
16 whether or not they have some  
17 connection if you don't know? I  
18 mean, if you don't know, the FBI  
19 doesn't know, and they believe this  
20 guy is making representations like  
21 this, don't you have at least a duty,  
22 sir, to check it out?

23 A. I think that's exactly what  
24 was done by the FBI.

25 Q. But why would they come if

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1       they thought it went up the ladder?  
2       You just now told us that it would  
3       have had to have been systemic, which  
4       means it had to go up through the  
5       system. And you've just got done  
6       testifying a few minutes ago that  
7       Rick said that if your name had been  
8       mentioned they would come to you.  
9       Now, you know, you are a human being,  
10      you aren't God, so you can make  
11      mistakes and you may be subject to  
12      making errors of judgment and perhaps  
13      even some sort of a defect in  
14      character for a moment. We can all  
15      bend. You know, we're --- we live in  
16      a Judeo-Christian society. People  
17      make mistakes, they sin, they make  
18      errors.

19           If you're going to investigate  
20      something like this and you have  
21      information, I want to go back to  
22      this thing of probable cause. My  
23      question is if you're an  
24      investigator, you get some  
25      information out there, the FBI gets

1 some information, don't they have a  
2 duty to check it out? And you've  
3 just told us it would have to be  
4 systemic, so if this guy makes this  
5 claim, you've got to check it out;  
6 right? You don't just dismiss it out  
7 of hand and come and tell Colonel  
8 Evanko; do you?

9 A. No, I don't think you dismiss  
10 it out of hand. I think you  
11 investigate it.

12 Q. Well, then Captain Ober did do  
13 the right thing?

14 A. In going directly to  
15 Lieutenant Colonel Hikus and not  
16 telling his bureau director?

17 Q. Yes.

18 A. No, I don't believe so.

19 Q. So he should have told his  
20 bureau director, who in this systemic  
21 situation, it would have to be, just  
22 happened to be Major Conley; right?  
23 Isn't that what you told us, it was  
24 systemic, and you just told us what  
25 the responsibilities are about people

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1 informing targets and all that. With  
2 all that stuff considered, the FBI is  
3 doing an investigation, I got my  
4 client sitting there trying to do his  
5 job the best way he can, expresses a  
6 concern to the FBI about what do I do  
7 with this information. Apparently  
8 something was discussed. We know  
9 that. You've already told us it was,  
10 and you made a note on it. What do  
11 you want this man to do, sir? What  
12 do you want Captain Ober to do in  
13 light of your charge here today that  
14 he violated FR 1-1.17? Can you  
15 explain it to me?

16 A. Well, first of all I was  
17 responding to your question as to  
18 whether he had violated any rules and  
19 regulations.

20 Q. All right, sir.

21 A. And I think that was a  
22 violation.

23 Q. Okay.

24 A. And I think he should have  
25 gone to the Director of the Bureau of

1 Professional Responsibility, Major  
2 Conley.

3 Q. Okay. And that's it. That's  
4 what you think he should have done;  
5 right?

6 A. Yes, I do.

7 Q. Now, he didn't do that; did  
8 he?

9 A. No, he did not.

10 Q. And hopefully, if this matter  
11 goes to trial, the jury is going to  
12 be able to sit there and decide  
13 whether or not Captain Ober, all  
14 things considered, exercised good  
15 judgment and whether or not you're  
16 correct in your analysis that he  
17 violated FR 1.17, whatever it is.

18 Well, if he violated that thing why  
19 wasn't he punished for it?

20 A. I don't think you have to take  
21 every violation of the rule or  
22 regulation and put it into the  
23 internal affairs process and  
24 discipline somebody. I think the  
25 very fact ---.

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1 Q. Fair enough. The very fact  
2 what?

3 A. That's all.

4 Q. The very fact what? Answer my  
5 question. The very fact what?

6 A. I think the fact that  
7 Lieutenant Colonel Hikus gave Captain  
8 Ober the orders that he did I think  
9 mitigated Captain Ober's involvement  
10 in this.

11 Q. So Captain Ober's lone and  
12 singular error was not telling Kip  
13 Stanton's commander at the time these  
14 things occurred in this, of  
15 necessity, systemic situation that  
16 the FBI had made an inquiry about  
17 selling positions in the state  
18 police; agreed?

19 A. You're going to have to tell  
20 me what the question is.

21 Q. I'm asking if you agree that  
22 Captain Ober's error, if any, was  
23 that he did not tell Kip Stanton's  
24 commander, during the matters  
25 complained of here in this systemic

1 situation, that the FBI was  
2 investigating the selling of  
3 positions? You agree? You have to  
4 agree with me. You've testified to  
5 that; haven't you?

6 A. First of all, it was not a  
7 systemic allegation. I think we had  
8 that on the record with Agent Cush  
9 saying that he never mentioned  
10 higher-up individuals in the state  
11 police or the Governor's Office. And  
12 yes, I do think that Captain Ober  
13 should have gone to his bureau  
14 director and told him about this  
15 phone call from the FBI.

16 Q. Well, if you believe that  
17 Captain Ober never heard this stuff  
18 about higher-ups, never heard this  
19 stuff about lieutenant colonels or  
20 colonels or anybody like that, okay,  
21 then Captain Ober is a liar and he  
22 should have been punished. Isn't  
23 that correct? He should have been  
24 disciplined for lying. I mean, this  
25 is an incredible lie, if he lied.

1 A. I don't know that the captain  
2 lied. I don't know what was in his  
3 mind. I can just tell you that my  
4 focus was on Lieutenant Colonel  
5 Hikus. And to tell you the truth  
6 after I came to the conclusions after  
7 reading the administrative inquiry  
8 and after I advised Lieutenant  
9 Colonel Hikus of what my conclusions  
10 were, very frankly, I didn't give  
11 Captain Ober much of a second  
12 thought.

13 Q. Okay. All right. I'm going  
14 to give you a lot of questions, sir,  
15 that I think will demonstrate to the  
16 contrary. I'm going to give you an  
17 opportunity to answer those. Let me,  
18 before I get to that, let's finish up  
19 the investigation. You at some point  
20 asked somebody to appoint  
21 investigators or did you appoint  
22 investigators yourself?

23 A. The investigators aren't  
24 appointed, they're assigned. And on  
25 the May 13th meeting with Lieutenant

1       Colonel Hikus, Lieutenant Colonel  
2       Wescott, Lieutenant Colonel Coury and  
3       myself, we discussed this incident  
4       again. And then Colonel Wescott ---  
5       well, first of all, Colonel Coury  
6       said to me --- the thing I said to  
7       him, you mean after Lieutenant  
8       Colonel Hikus left on the 13th?

9       Q.       Yes.

10      A.       I said, Tom, assign a couple  
11       of BPR investigators and we're  
12       talking. And when the four of us  
13       were together, we talked about, I'm  
14       going to get somebody to look at  
15       these facts. Colonel Hikus left and  
16       then I told Colonel Coury, in fact, I  
17       don't even know when Colonel Hikus  
18       left. But I told Colonel Coury get a  
19       couple of BPR investigators and we'll  
20       find out what the facts are here.  
21       Colonel Coury said to me, hey, this  
22       isn't a BPR investigation, it's not  
23       appropriate to be in the BPR system.  
24       And then I think it was at that  
25       point that Colonel Wescott and I and

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1      Colonel Coury decided to have Major  
2      Wertz and Major Williams do these  
3      interviews.

4      Q.      Why was it not appropriate to  
5      be in the BPR system if Mr. Ober had  
6      violated field regulation 1.1 ---  
7      1 - 1 . 1 7 ?

8      A.      I was looking at this from a  
9      point of view of something that ---.  
10     I wasn't making an allegation of  
11     misconduct.

12     Q.      Why was he read his rights?  
13     Did you tell them to read him his  
14     rights?

15     A.      I don't know that he was read  
16     his rights.

17     Q.      Merryman was read his rights.  
18     What was he read his rights for?

19     A.      I don't know that Merryman was  
20     read his rights.

21     Q.      So you didn't talk to these  
22     guys about methodology; right?

23     A.      If I talked to them and the  
24     only reason I recollect having a  
25     conversation with Wertz and Williams

1       is just from Lieutenant Wescott's  
2 deposition where he said that I met  
3 with them. But no, I would not have  
4 given them direction on using  
5 administrative rules.

6       Q.       So you don't remember what  
7 happened in the meeting you had with  
8 Williams and Wertz?

9       A.       No, I don't.

10      Q.       Well, you remember Colonel  
11 Wescott jumped in an airplane and  
12 flew up to Williams and told him, I  
13 got a job for you; right? You know  
14 that?

15      A.       I remember Colonel Wescott  
16 stating that in his deposition.

17      Q.       Well, do you remember who  
18 initially recommended Williams and  
19 Wertz?

20      A.       It was probably Lieutenant  
21 Colonel Wescott.

22      Q.       You didn't tell him to go jump  
23 in the airplane and go up and talk to  
24 him first, don't do it by landline or  
25 anything?

1 A. No.

2 Q. Did you ever have Wescott  
3 investigated for wasting Pennsylvania  
4 State Police resources in an  
5 airplane, flying an airplane up there  
6 when he could pick up a telephone and  
7 say, come down here?

8 A. I don't know if, number one,  
9 Lieutenant Colonel Wescott did it,  
10 and number two, I don't know whether  
11 Lieutenant Colonel Wescott went up  
12 there for additional business. I  
13 don't know. No, I did not have him  
14 investigated.

15 Q. Well, I represent --- I, you  
16 know, never mind. I remember his  
17 testimony very well. Were you  
18 present during his deposition?

19 A. Yes, I was.

20 Q. So you believe it was probably  
21 Lieutenant Colonel Wertz (sic) who  
22 recommended Williams and Wertz for  
23 majors, two majors for this  
24 investigation?

25 A. I think it was probably

1 Lieutenant Colonel Wescott who made a  
2 recommendation to assign those two  
3 majors.

4 Q. Lieutenant Colonel Coury  
5 testified, I know you were here,  
6 because I remember your being here,  
7 that he had advised you, and I think  
8 you've just testified to this, that  
9 this wasn't a BPR type of  
10 investigation. But what type was it  
11 then?

12 A. It was an administrative  
13 inquiry.

14 Q. An administrative inquiry.  
15 What is that?

16 A. It's looking into the facts  
17 and circumstances of an event.

18 Q. And you had no predilection at  
19 that point to punish or arm anyone  
20 over the events of the FBI probe; is  
21 that correct?

22 A. That is correct.

23 Q. I believe that at some point  
24 there was a meeting, a debriefing, if  
25 you will, by Mr. Williams and Mr.

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1 Wertz of the results of their  
2 investigation?

3 A. There was a point in time when  
4 they came and gave me the  
5 administrative inquiry.

6 Q. Well, did you read it? Did  
7 you go over it?

8 A. Yes, I did.

9 Q. Do you think they did a good  
10 job, Williams and Wertz?

11 A. They answered the questions I  
12 needed answered.

13 Q. And what were the questions  
14 that you needed answered?

15 A. I needed to make an evaluation  
16 of the judgment used by Lieutenant  
17 Colonel Hikus in informing me as well  
18 as Captain Ober too of not going to  
19 his major.

20 Q. Well, one of the things in the  
21 investigation as I remember it was  
22 this thing about Mr. Ober renting a  
23 hotel room and buying some beverages  
24 for the FBI out there in Indiana. Do  
25 you remember that?

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1 A. Do I remember that as part of  
2 the administrative inquiry?

3 Q. Sure.

4 A. No.

5 Q. Do you remember anything about  
6 that?

7 A. I know that he filed a  
8 grievance claim and was denied part  
9 of that reimbursement.

10 Q. Well, we'll get to that. It's  
11 okay for two cert teams to be  
12 activated to escort assets for PNC  
13 Bank across the state of  
14 Pennsylvania. Do you know whether  
15 they charged \$7.32 for each  
16 Pennsylvania State Police vehicle  
17 used?

18 A. I don't know.

19 Q. Do you know how many  
20 Pennsylvania State Police vehicles  
21 were used?

22 A. No, I don't.

23 Q. Do you know, I'd asked you  
24 about the helicopter. You didn't  
25 know whether the helicopter was used.

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1 And you don't know whether PNC paid  
2 for that?

3 A. I don't know.

4 Q. Do you know about a  
5 Pennsylvania State Police Regulation  
6 that says that the Pennsylvania State  
7 Police are not supposed to be used to  
8 guard money or bank assets for folks?

9 A. I think there's a provision in  
10 there absent exigent circumstances,  
11 something like that.

12 Q. Well, what were the exigent  
13 circumstances?

14 A. Five billion dollars.

15 Q. Oh, were they dollars,  
16 Colonel?

17 A. Currency, negotiable  
18 instruments, whatever.

19 Q. Well, negotiable instruments.  
20 Do you know whether those negotiable  
21 instruments, the way that they were  
22 put together --- I know a little bit  
23 about negotiable instruments. Do you  
24 know whether the way they could have  
25 been put together that they could

1 have been assaulted or whatever?

2 A. That they could have been  
3 cashed?

4 Q. Sure, taken and used, yes.

5 A. It was my understanding that  
6 they could, yes.

7 Q. Well, how much did you  
8 investigate that?

9 A. I didn't investigate it at  
10 all.

11 Q. You just did it?

12 A. Yes.

13 Q. Without the Governor's Office  
14 knowing anything about it?

15 A. Yes.

16 Q. Without Governor Ridge knowing  
17 anything about it?

18 A. Yes.

19 Q. Were you suspecting terrorism?

20 A. Five billion dollars I didn't  
21 know what to expect.

22 Q. Well, the number is, you know,  
23 five billion dollars. I know that  
24 sounds very impressive and all that  
25 sort of thing, you know, but are

1       there private companies that  
2       specialize in doing that kind of  
3       work?

4       A.       I don't know.

5       Q.       Well, did you ask PNC why they  
6       didn't go hire people that are  
7       qualified and have the kind of  
8       vehicles and the kind of equipment to  
9       do that sort of thing?

10      A.       I don't believe so.

11      Q.       Five billion bucks, maybe they  
12     could have bought a warehouse down in  
13     Philadelphia to brick it up for  
14     \$50,000 and would have saved money  
15     and didn't have to transport that  
16     stuff. I mean, all you got to do is  
17     own it; right? Isn't it true that  
18     they were changing their corporate  
19     headquarters from Philadelphia to  
20     Pittsburgh or something like that?

21      A.       I'm not sure.

22      Q.       You didn't even check that  
23     out?

24      A.       If I did, I don't recall it.

25      Q.       Where do you draw the line on

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1       whether or not you activate your cert  
2       teams in order to help private  
3       companies in Pennsylvania move their  
4       assets around?

5       A.       I'm not sure what you mean.

6       Q.       Well, how does that compare  
7       with the situation Captain Ober was  
8       in where he rents a hotel room, okay,  
9       and orders a couple cups of coffee  
10      for the FBI? How does it compare in  
11      terms of spending my taxpayer's, your  
12      taxpayer's, we're all taxpayers, in  
13      spending taxpayer money and  
14      conforming to Pennsylvania State  
15      Police Regulations? Because he was  
16      denied reimbursement for that.

17      A.       I'm not sure what you mean by  
18      the question.

19      Q.       I want you to compare the two  
20      situations in terms of what you know  
21      about Pennsylvania State Police  
22      Regulations, Pennsylvania State  
23      Police practices and the benefits of  
24      using Pennsylvania State Police  
25      resources to rent a hotel room on one

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1 case and order a couple of cups of  
2 coffee for two FBI agents in a public  
3 corruption investigation as opposed  
4 to activating two cert teams, better  
5 than 40 people, all kinds of  
6 Pennsylvania State Police vehicles  
7 with people driving those,  
8 helicopters, to help PNC, who's a  
9 state depository, move assets from  
10 Philadelphia to Pittsburgh.

11 Something they can go and hire Brinks  
12 and Wells Fargo and people like that  
13 who move billions of dollars every  
14 single day in this country. Now,  
15 what compares about those two  
16 situations such that this man, my  
17 client, has to grieve the  
18 reimbursement of a few bucks in doing  
19 a public corruption investigation?

20 A. I don't think they are  
21 comparable circumstances.

22 Q. Sir, back on Evanko Number  
23 Two, the second page of Evanko Two,  
24 do you see the word CI?

25 A. Yes.

1 Q. It says Stanton approached  
2 him. And then what does that say  
3 there?

4 A. I can pay you 10K, \$10,000 for  
5 this.

6 Q. Okay. Did they ever tell you  
7 who the CI was and what they did?

8 A. Did Special Agent Mascara tell  
9 me that?

10 Q. Yes.

11 A. No. In fact, I don't think  
12 they ever revealed the confidential  
13 informant.

14 Q. Okay. Now, there's an empty  
15 line there and then what's the next  
16 line, what's that I see? It looks to  
17 me like it's turn over tapes and  
18 conversations to Ober. Is that what  
19 it says?

20 A. Yes, sir.

21 Q. Then it says, this I cannot  
22 read. What's that statement?

23 A. Source went to rep and nothing  
24 happened, dash, Ober concerned about  
25 going anywhere with info.

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1 Q. Okay. Source went to rep and  
2 nothing happened. Do you understand  
3 rep to mean a State Representative?

4 A. I think that's what he was  
5 referring to.

6 Q. Well, how did the FBI know  
7 that nothing happened?

8 A. I guess they did an  
9 investigation.

10 Q. And you would assume that what  
11 that means is that Stanton was not  
12 able to deliver; right?

13 A. I would assume what that meant  
14 was that the representative wouldn't  
15 get involved in that. That's what I  
16 understand.

17 Q. You would assume what, that  
18 the representative ---?

19 A. That the representative was  
20 not involved in whatever was alleged.

21 Q. Okay. We went over the Ober  
22 stuff. Now, go down to the next line  
23 here, is investigation closed, is  
24 that what you ---?

25 A. Yes.

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1 Q. Didn't you believe what Hikus  
2 and Ober had told you or what Cush  
3 had told, whether it was Cush or  
4 another guy, I think there was a guy  
5 Kelly that was actually an FBI agent?

6 A. I don't know.

7 Q. So you were asking Rick again  
8 now to confirm that the investigation  
9 is closed?

10 A. This is Mascara talking to me.

11 Q. I'm sorry, sir. Yes, you're  
12 asking Rick Mascara again. So  
13 Mascara is saying to you, is the  
14 investigation closed? You're not  
15 saying that to him?

16 A. No, I'm saying that to him,  
17 this investigation is closed.

18 Q. Right, right. Dash, case  
19 declined, federal prosecutors.

20 A. Or federal prosecution.

21 Q. Okay. Which you took that to  
22 mean was that Rick was saying that  
23 the feds aren't going to prosecute?

24 A. Yes, I think that was the  
25 case.

1 Q. Then there's a dash, and what  
2 does that say, investigation closed?

3 A. Investigation closed,  
4 underneath that, to PSP. Closed,  
5 dash, to PSP, underneath that.

6 Q. Okay. Sir, the next line,  
7 what is it, overtime? What is that?

8 A. What was outcome.

9 Q. And again, this is what Rick's  
10 saying?

11 A. Yes, sir. Well ----.

12 Q. I'm sorry.

13 A. I asked what the outcome was.

14 Q. Okay. It looks like Stanton  
15 is bad, dash, nothing systemic, which  
16 you've already explained to us, dash,  
17 now what does that say?

18 A. What's the next line say?

19 Q. Yes, yes.

20 A. Nobody else but bad statey is  
21 mentioned. Opened two and a half  
22 years.

23 Q. Two and a half or three and a  
24 half?

25 A. Two and a half.

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1 Q. Nobody but bad statey  
2 involved; right?

3 A. Yes. Or bad statey is  
4 involved, one of the two.

5 Q. Okay. Now, this says opened  
6 two and a half years?

7 A. Yes.

8 Q. Then it says Major Williams to  
9 see you, sort things out. Do you  
10 have any information to indicate that  
11 any of these FBI agents at any point  
12 have talked to Lieutenant Colonel  
13 Hikus?

14 A. No, I do not.

15 Q. So you got Williams going out  
16 to talk to them about what occurred  
17 between the FBI and Captain Ober?

18 A. Yes, sir.

19 Q. Did it occur to you that maybe  
20 the FBI would think that you didn't  
21 trust your own people?

22 A. No, that never occurred to me.

23 Q. I mean, did you think that  
24 maybe it was embarrassing to you that  
25 you have your investigators to go out

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1 and check what's going on between the  
2 FBI and your people?

3 A. No, I didn't.

4 Q. Well, your investigators  
5 didn't go out and check what had  
6 happened with the previous  
7 investigation, first surfaced in '97  
8 IAD notified you. You didn't have  
9 Mr. Williams checking that out; did  
10 you?

11 A. No, because by the time I got  
12 the administrative inquiry, that  
13 criminal and administrative  
14 investigation was already ongoing.

15 Q. And I can't figure that out.  
16 If you're looking at facts and  
17 circumstances and the criminal  
18 investigation's into Stanton, who we  
19 know is a bad cop, but your concern  
20 about Hikus and Ober is totally  
21 different. Although, Ober not much  
22 because you knew what he did and he  
23 was under orders from Hikus. You  
24 don't see those as two different  
25 things? You see those as the same

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1 kind of thing, that they're going to  
2 yield the same kind of response to  
3 the questions you have about what  
4 occurred?

5 A. I'm not sure I understand.

6 Q. Well, the administrative  
7 inquiry into Stanton is going to be  
8 what he did as a result of the  
9 criminal activity he was involved in;  
10 right?

11 A. It was an internal affairs  
12 investigation into Stanton's  
13 violation of the law.

14 Q. Yes. And you wouldn't let  
15 that interfere with a criminal  
16 investigation; right?

17 A. No, it would have been  
18 concurrent with the criminal  
19 investigation.

20 Q. But you would never let it  
21 interfere with a criminal  
22 investigation; right?

23 A. No, I would not let it  
24 interfere. I would not expect it to  
25 interfere with a criminal

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1 investigation.

2 Q. Right. And the FBI told you  
3 that they were not going to prosecute  
4 Stanton, that they declined to  
5 prosecute.

6 A. I don't know whether it was  
7 the FBI that declined the prosecution  
8 or if it was the U.S. Attorney's  
9 office.

10 Q. And your testimony here today  
11 is that there was no need to check on  
12 who at IAD had been told earlier,  
13 why that had not been reported to  
14 you, why you hadn't been informed.  
15 And you don't know when Lynn Bodack  
16 (phonetic) was mentioned or any other  
17 public official. And you don't know  
18 why this thing sat out there with the  
19 FBI. You figured that the criminal  
20 investigation into Stanton and the  
21 administrative inquiry into Stanton  
22 was underway, and it would yield  
23 answers to those questions. That's  
24 what you felt?

25 A. I guess I thought that the

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1       criminal investigation would proceed  
2       and that they would probably arrest  
3       him.

4       Q.       Do you know whether Major  
5       Williams ever went out and talked to  
6       Mascara?

7       A.       I don't think so.

8       Q.       Why not?

9       A.       I don't know.

10                                  ATTORNEY BAILEY:

11                                  I'm going to suggest at  
12                                  this point that we break for a  
13                                  lunch period. At least I  
14                                  would like to. It's a good  
15                                  point for me here. Darrell,  
16                                  I'd like to you go and check  
17                                  your personnel file at this  
18                                  point. If they want to send  
19                                  Mr. Brown one, that's fine.  
20                                  And with that being said,  
21                                  we'll reconvene at 1:30.

22                                  SHORT BREAK TAKEN

23                                  JUDGE CALDWELL:

24                                  The time is 1:37 p.m.  
25                                  on March 27, 2002 and we're

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1 resuming the deposition of Mr.  
2 Evanko.

3 VIDEOGRAPHER:

4 Back on record.

5 VIDEO RECORD AT 1:37 P.M.

6 ATTORNEY BAILEY:

7 All right. Ladies and  
8 gentlemen, good afternoon. I  
9 would like to inform opposing  
10 counsel and Mr. Evanko that we  
11 have gone over and looked at  
12 Mr. Ober's file, that the  
13 document that I was talking  
14 about --- and we incidentally  
15 did this while the custodian  
16 was there with us, naturally.  
17 The document that I referred  
18 to is not in his file. This  
19 file only exists at one other  
20 location that we know of.  
21 Where is that, headquarters is  
22 what file?

23 MR. OBER:

24 LCE Headquarters.

25 ATTORNEY BAILEY

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I make the following representations, I'd like to Mr. --- in fact, may get Mr. Ober on tape at the end of Commissioner Evanko's deposition. I want to refer to that again. But at no time has he taken anything out of his file except to copy it. He did copy because I had asked him to review his file, this document.

He checked that LCEE  
file again with somebody  
present this morning. The

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1           document is missing from his  
2           file. There's no way in the  
3           world he could have taken it  
4           out of his file. The document  
5           is missing from his file over  
6           at the headquarters. The  
7           document is a key and material  
8           piece of evidence in the  
9           retaliation and damage portion  
10          of the claim, and we are  
11          complaining about that fact.  
12          That being said, we'll deal  
13          with that at the end of this  
14          deposition.

15           I would respectfully  
16          ask opposing counsel, when you  
17          had deposed Mr. Ober, I had  
18          indicated there may be times  
19          when we need extra time ---.

20          BRIEF INTERRUPTION

21           ATTORNEY BAILEY:

22           Let me say again.

23           There were times when Mr. Ober  
24          was deposed, the request had  
25          been made of me to make him

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1 available for additional time.  
2 I think it's going to be  
3 difficult to complete Colonel  
4 Evanko today. I'll need some  
5 additional time, and I'm  
6 requesting the same courtesy  
7 that I've extended in that  
8 same regard. Would that be  
9 okay? We need a little bit  
10 more time.

11 ATTORNEY CHRISTIE:

12 We'll go as late as you  
13 can tonight and we can make  
14 Colonel Evanko available again  
15 tomorrow morning.

16 ATTORNEY BAILEY:

17 Well, okay. I've got a  
18 hearing up around Allentown  
19 tomorrow morning, but ---.

20 ATTORNEY CHRISTIE:

21 Then we should go late  
22 tonight then.

23 ATTORNEY BAILEY:

24 Well, we'll do our best  
25 to do this. And if we can do

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1           it at another time, I'd  
2           appreciate it. Tomorrow may  
3           be --- I'll double-check, when  
4           you get a chance to break,  
5           just on that. But I think  
6           I'd ---.

7           ATTORNEY CHRISTIE:

8           Colonel Evanko is  
9           leaving on Saturday for a  
10          couple of weeks. So that's  
11          why we're saying ---.

12          ATTORNEY BAILEY:

13          Okay. Well, let's try  
14          to get at it then. Colonel,  
15          try to get through this as  
16          best we can. Okay?

17          BY ATTORNEY BAILEY:

18          Q.        I want to change gears just a  
19          little bit, Colonel, if I can. Do  
20          you have a recollection of the Bureau  
21          of Education asking for \$20,000 for  
22          model cars?

23          A.        No, I don't.

24          Q.        This is 164 scale die cast  
25          model 1995 Ford SVT Mustang Cobra at

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1       \$4 each. 5,000 was the quantity  
2 requested for a total of \$20,000,  
3 requested by Jane A. First items  
4 will be used as special giveaways  
5 during the presentation of the  
6 full-size model vehicle. Now, the  
7 reason I'm asking you is you know  
8 where I'm coming from. Apparently  
9 these things were to be used during  
10 the presentation of drug and alcohol  
11 education programs by the department.  
12 I just want to ask you if you know  
13 whether the vehicles were ever  
14 delivered to the department and how  
15 they were used, if you know?

16 A.       I don't know.

17 Q.       And do you feel that an  
18 expenditure like this is justified as  
19 a precautionary measure? Captain  
20 Ober has indicated that from a  
21 precautionary point of view when he  
22 met with the FBI agents, Mr. Cush and  
23 I forget who the other gentlemen was,  
24 out there in Indiana, that he had  
25 rented a hotel room and got some

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1 coffee. Do you think that this  
2 expenditure here is on an equal level  
3 with the judgment that Mr. Ober  
4 displayed in renting that hotel room?  
5 And what was the purpose for the use  
6 of those items?

7 Q. Items would be used as special  
8 giveaways during a presentation of  
9 the full scale model vehicle. A  
10 full-size Mustang is used by  
11 community service officers to present  
12 drug and alcohol education programs  
13 throughout the Commonwealth.

14 A. If this involves school  
15 children I think this was the more  
16 appropriate of the expenses. I think  
17 if there were any expenses incurred  
18 in this investigation they should  
19 have been incurred by the FBI.

20 Q. Do you know whether these  
21 giveaway vehicles are ever accounted  
22 for? People know where they are,  
23 what's done with them?

24 A. I don't know because I've  
25 never seen any.

1 Q. Have you ever seen museum  
2 items for the State Police Museum?

3 A. I donate things to the State  
4 Police Historical Education and  
5 Museum Committee. I don't know  
6 anything --- I don't know where  
7 you're going for what you mean.

8 Q. Okay. Where I'm going is you  
9 donated --- for example, there was a  
10 typewriter that was given to you by a  
11 mistake and then you donated it;  
12 right?

13 A. I don't know if I ever donated  
14 that. I donated a typewriter from  
15 the estate of Herm Fialdia  
16 (phonetic), yes.

17 Q. Well, the reason I'm asking  
18 you is, it was given to you or sold  
19 to you, however you acquired it as an  
20 individual, and then you gave it to  
21 the state police; right?

22 A. I gave it to the Historical  
23 Educational and Museum Committee,  
24 which is separate from the state  
25 police department.

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1 Q. Okay. That's the state  
2 museum; right?

3 A. No. It's a non-profit  
4 organization that's attempting to  
5 build a museum for the State Police  
6 History Education Research and a  
7 memorial center.

8 Q. You have items of a historic  
9 significance in your office that  
10 could be defined as Pennsylvania  
11 state police memorabilia?

12 A. I probably do.

13 Q. Helmets, that kind of thing?

14 A. Yes.

15 Q. They're quite prized items;  
16 aren't they?

17 A. Yes, they are.

18 Q. And do you own any of those?

19 A. Yes, I do.

20 Q. How did you acquire them?

21 A. I got one from my father and I  
22 got one from the estate of Herm  
23 Fialdia.

24 Q. Have you ever been  
25 investigated for them?

1 A. No.

2 Q. Do you know whether or not  
3 Colonel Coury ever played any role on  
4 having Captain Ober investigated for  
5 some alleged acquisition of  
6 Pennsylvania state police  
7 memorabilia?

8 A. I remember listening to  
9 somebody's deposition. I think it  
10 was that an individual by the name of  
11 Phil Conti had wrote a letter of  
12 complaint. So I know that.

13 Q. Yes, sir. Did you ever read  
14 that letter?

15 A. No, I didn't.

16 Q. So you don't have a view as to  
17 whether or not that letter is a  
18 letter of complaint?

19 A. I don't know. I haven't read  
20 it.

21 Q. Do you know who did the  
22 adjudication in Captain Ober's case?

23 A. No, I don't.

24 Q. Do you know if his case was  
25 assigned a BPR, what's called a BPR

210

1 number?

2 A. I don't know.

3 Q. And do you know if he was ever  
4 informed of the finding and results  
5 in that case?

6 A. If it were a internal affairs  
7 investigation I would think that he  
8 was.

9 Q. You would think that he was.  
10 Do you know if he was, sir?

11 A. No, I don't.

12 Q. Sir, do you know whether he  
13 was ever informed of the results of  
14 the investigation that you ordered  
15 Majors Williams and Wertz to do?

16 A. I know that after I discussed  
17 my conclusions with Lieutenant  
18 Colonel Hikus, that Lieutenant  
19 Colonel Hikus advised Captain Ober.  
20 And I know from Lieutenant Colonel  
21 Hikus' deposition earlier this week.

22 Q. Prior to Lieutenant Colonel  
23 Hikus testifying in the manner that  
24 he did about that issue, had you any  
25 knowledge of Captain Ober being told

211

1 anything about that investigation  
2 being closed?

3 A. I didn't know, but I expected  
4 that Lieutenant Colonel Hikus would  
5 do that because Captain Ober was  
6 under his chain of command.

7 Q. Well, do you know if  
8 Lieutenant Colonel Hikus was given  
9 the investigation, or given a copy of  
10 the investigation?

11 A. No, sir, he was not.

12 Q. Do you know if the same is  
13 true of the museum investigation?

14 A. As to whether ---?

15 Q. If Colonel Hikus was given a  
16 copy of that?

17 A. I don't know.

18 Q. Okay. Are there any current  
19 BPRs into Captain Ober?

20 A. Not that I'm aware of.

21 Q. Going back, though, I'm going  
22 to change a little bit the direction  
23 we've been going here. And I want to  
24 ask you some questions, some calendar  
25 questions about when things --- when

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1 you made decisions about Captain  
2 Ober. You had already testified that  
3 you never gave whether or not he  
4 violated a regulation another thought  
5 after you learned that Hikus had  
6 ordered him not to say anything. And  
7 you've indicated that the primary  
8 concern you had in finding out about  
9 the facts and circumstances of the  
10 FBI probe had to do with Colonel  
11 Hikus' behavior and activities. Have  
12 I misstated anything?

13 A. You misstated the first part.  
14 It was after I had advised Colonel  
15 Hikus of my conclusions where I made  
16 the comment that I didn't give much  
17 of a thought to Captain Ober after  
18 that.

19 Q. Okay. And when was that?

20 A. Sometime around Labor Day or  
21 the last week of August, something  
22 like that.

23 Q. 1999?

24 A. Of 1999.

25 Q. Okay. Sometime in April 1999,

213

1 you appointed Captain Ober to IIMS;  
2 right?

3 A. I detached him from the Bureau  
4 of Professional Responsibility to the  
5 Bureau of Technology Services to work  
6 on the IIMS project.

7 Q. Now, IIMS, very, very briefly  
8 --- we have enough on the record, I  
9 think, to know what it is. Why did  
10 you put Captain Ober there?

11 A. Because I thought he would do  
12 a good job in that assignment.

13 Q. And do you know what kind of  
14 role he played with that assignment?

15 A. He was the team leader to  
16 develop the selection criteria for  
17 the systems integrator for Phase 1,  
18 the 13-month project to design  
19 the ---.

20 Q. Keep your voice up just a wee  
21 little bit.

22 A. To design the integration of  
23 all the other teams that were working  
24 on the mobile office, the mobile  
25 applications team, the AVL, the GIS,

214

1 the CAD, the CAD system, the  
2 consolidated dispatch centers.

3 Q. How much was IIMS when it was  
4 all completed, going to cost the tax  
5 payer, roughly?

6 A. Just the IIMS program?

7 Q. Roughly.

8 A. \$100 million. And that  
9 would've included all the building  
10 sites for the consolidated dispatch  
11 centers, all the telephone, the new  
12 telephone equipment, all of the  
13 computers, all the personnel. And  
14 that was just the one phase of the  
15 automation project.

16 Q. Now, when you appointed  
17 Captain Ober to the IIMS assignment,  
18 you made an agreement with him;  
19 didn't you?

20 A. Yes, I did.

21 Q. And tell us quickly, sir, what  
22 was that agreement?

23 A. I agreed to return him to the  
24 Bureau of Professional Responsibility  
25 upon completion of his assignment.

1 Q. And Captain Ober felt strongly  
2 about that; didn't he?

3 A. Well, he wanted to go back to  
4 the Bureau of Professional  
5 Responsibility, yes.

6 Q. And you had no difficulty with  
7 that, because you believed in Captain  
8 Ober; didn't you?

9 A. It was the agreement that I  
10 made with him.

11 Q. You believed in him, you felt  
12 that he was a fine and capable  
13 Pennsylvania State Police officer;  
14 didn't you, sir?

15 A. When I made that assignment,  
16 yes, I did.

17 Q. When you made that assignment  
18 you did?

19 A. Yes.

20 Q. And you placed in writing a  
21 commitment to return him, him being  
22 Captain Ober, to IAD at the  
23 completion of his IIMS attachment  
24 from the Bureau of Professional  
25 Responsibility, the internal affairs

216

1 division to IIMS; correct? You put  
2 that in writing?

3 A. There is a clean message to  
4 that effect.

5 Q. Now, the assignment that you  
6 made of Captain Ober to IIMS was it  
7 on April 26, 1999; wasn't it?

8 A. Yes, sir.

9 Q. And Captain Ober and  
10 Lieutenant Colonel Hikus came in and  
11 they told you about this FBI probe,  
12 which of course the FBI hadn't  
13 informed you of and which Colonel  
14 Hikus and Captain Ober had not  
15 informed you of and you didn't learn  
16 about. They informed you about it on  
17 May 12th, 1999; correct?

18 A. That is correct.

19 Q. And your testimony here today  
20 indicates that you told Lieutenant  
21 Colonel Hikus something to the  
22 effect, that the investigation that  
23 you had ordered was over sometime on  
24 or about Labor Day of 1999; right?

25 A. That is correct.

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1 Q. With the expectation that  
2 Lieutenant Colonel Hikus, and you  
3 said was in Captain Ober's chain of  
4 command, would tell Captain Ober?

5 A. That is correct.

6 Q. Well, did you tell Colonel  
7 Conley?

8 A. Did I tell him what?

9 Q. About the investigation being  
10 over?

11 A. No, I did not.

12 Q. Why not?

13 A. Because Captain Ober was  
14 detached to the Bureau Technology  
15 Services under the command of  
16 Lieutenant Colonel Hikus.

17 Q. On or about November 8th,  
18 1999, did Captain Ober file a  
19 grievance of some type?

20 A. On what date?

21 Q. I believe November 8th. And  
22 then another on December 22nd, 1999?

23 A. I know that he filed  
24 grievances, I don't know what the  
25 dates are.

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1 Q. Fact is, you have a standing  
2 order as Commissioner, you know what  
3 grievances are filed. You're  
4 informed of that; isn't that correct?

5 A. No, that is not correct. I am  
6 not informed of them.

7 Q. What about EEOC complaints, if  
8 somebody complains about an issue of  
9 race or invidious discrimination?

10 A. If it results in a internal  
11 affairs investigation normally it  
12 would be reported on a weekly report  
13 of significant BPR issues.

14 Q. Well, at some point you had  
15 made a decision that Captain Ober was  
16 to go to Washington County; right?

17 A. Yes, I did.

18 Q. And when did you decide that?

19 A. Sometime in late December or  
20 early January of 2002 --- December of  
21 '99 and January of 2000, January  
22 2000.

23 Q. And why did you do that?

24 A. Because Colonel Wescott was  
25 asking for someone to assist Major

219

1 Zipinka in preparation for the  
2 National Governors' Association.

3 Q. Why Captain Ober?

4 A. He was finishing up his  
5 assignment with IIMS, he was  
6 available, and Major Conley had asked  
7 for him not to be returned to the  
8 Bureau of Professional  
9 Responsibility.

10 Q. When did ---?

11 A. And he could do the job.

12 Q. And he could do the job. When  
13 did Mr. Conley first tell you he  
14 didn't want Mr. Ober back?

15 A. I think Lieutenant Colonel  
16 Coury told me first. And it would've  
17 been end of December, beginning of  
18 January.

19 Q. Well, did you bring Captain  
20 Ober in and discuss that with him?

21 A. No, I didn't.

22 Q. Any reason why not?

23 A. I treated him the same way  
24 that I treated Captain Transue.

25 Q. Captain Transue's down around

220

1 Philadelphia?

2 A. That's where she is now, yes.

3 Q. Yes. But where was she when  
4 you moved her out?

5 A. She was in the Bureau of  
6 Research and Development.

7 Q. And you sent her where?

8 A. To Philadelphia.

9 Q. For what reason?

10 A. To assist in the preparation  
11 of the troops for the Republican  
12 National Convention.

13 Q. Is that similar to the  
14 treatment that Captain Young  
15 received? How was that --- I'm  
16 sorry.

17 A. Go ahead finish your question.

18 Q. How was Captain Young handled?

19 A. In what way.

20 Q. Was he transferred at all?

21 A. Yes. After the injunction was  
22 filed I assigned Captain --- I  
23 promoted Captain Young and  
24 transferred him to Major Zipinka to  
25 assist in the final preparations of

221

1 the National Governors' Association.

2 Q. Well, now, Captain Ober had  
3 filed a couple of grievances with  
4 them; right?

5 A. It's my understanding that he  
6 did.

7 Q. November and December; is that  
8 correct?

9 A. I don't know when.

10 Q. In one of those grievances did  
11 he write in the grievance that there  
12 was an issue of retaliation?

13 A. I don't know, because I've  
14 never read them.

15 Q. Well, do you know when Captain  
16 Ober was informed, first informed,  
17 that he was going to Washington?

18 A. I would imagine the beginning  
19 of January.

20 Q. Do you know who told him?

21 A. It would have either been  
22 Lieutenant Colonel Hikus or Major  
23 Conley, one of the two, or Major Walp  
24 (phonetic). I think it was Major  
25 Walp that told him.

222

1 Q. Major Walp say anything to you  
2 about moving Captain Ober?

3 A. After Lieutenant Colonel Hikus  
4 told me that Captain Ober's  
5 assignment was done, Major Walp did  
6 ask if he could be retained on the  
7 IIMS assignment.

8 Q. Now, at some point did you  
9 tell Captain Ober that he was going  
10 to be leaving IIMS?

11 A. No, I didn't.

12 Q. Well, did you cause somebody  
13 to tell him that?

14 A. I would have told either  
15 Lieutenant Colonel Hikus --- probably  
16 Lieutenant Colonel Hikus.

17 Q. Now, did Colonel Conley, by  
18 this time I guess he's a Colonel,  
19 did Colonel Conley inform Mr. Ober on  
20 or about January 10th that he was  
21 going out to Washington?

22 A. It would've either been  
23 Lieutenant Colonel Hikus or Major  
24 Conley, one of the two.

25 Q. So who consulted with you ---

223

1 you said it was Wescott who consulted  
2 with you about this need out in  
3 Washington, Pennsylvania?

4 A. Yes, sir.

5 Q. What other captains did you  
6 consider?

7 A. I don't think I considered any  
8 other captains. Because Captain Ober  
9 was available, I knew he could do the  
10 job and his assignment with the IIMS  
11 project was done.

12 Q. Was it done?

13 A. Yes.

14 Q. When did they vote on it?

15 A. I do not know.

16 Q. Why wouldn't you know that  
17 before you reassigned him somewhere  
18 else?

19 A. Because I asked Lieutenant  
20 Colonel Hikus if he was done and he  
21 told me he was.

22 Q. Now, Lieutenant Colonel Hikus  
23 told you that at that time?

24 A. The end of December or the  
25 beginning of January.

224

1 Q. Did you discuss Lieutenant  
2 Colonel Hikus' testimony with him  
3 before he testified the other day?

4 A. No, I did not.

5 Q. Did Captain Ober ever return  
6 to IAD?

7 A. No, he did not.

8 Q. Why not ---?

9 A. Or he may have returned for a  
10 couple days because I did not  
11 transfer him back there or if I did  
12 it was for a short period of time.

13 Q. Well, when did you learn that  
14 he had filed an action against the  
15 department?

16 A. I'm not sure when that was.

17 Q. Was it on or about the 26th of  
18 January?

19 A. I don't know.

20 Q. 2000?

21 A. I don't know.

22 Q. Well, what was to be his  
23 effective date to go back to IAD?

24 A. I'd have to look at a  
25 personnel order. I don't recall.

225

1 Q. Well, hadn't you initially  
2 assigned him to go back to IAD?

3 A. At the conclusion of his  
4 assignment to Bureau of Technology  
5 Services?

6 Q. Yes. In other words, sir,  
7 hadn't you assigned him back to IAD  
8 for like a week or five days or some  
9 such thing?

10 A. I think it was going to be one  
11 full pay period.

12 Q. And what's a full pay period?

13 A. Two weeks.

14 Q. Two weeks. Why did you do  
15 that?

16 A. The formality of doing it.

17 Q. Sorry. The formality of doing  
18 it, sir?

19 A. Yes.

20 Q. You weren't doing it to slap  
21 him in the face; were you, Colonel?

22 A. No, I wasn't.

23 Q. You weren't doing it to insult  
24 him; were you?

25 A. No, I wasn't.

226

1 Q. You were not doing it to send  
2 him a message; were you?

3 A. No, I wasn't.

4 Q. You weren't doing it to teach  
5 Mr. Hikus a lesson; were you?

6 A. Pardon me?

7 Q. You weren't doing it to teach  
8 Mr. Hikus a lesson; were you?

9 A. No, I was not.

10 Q. You weren't doing it to punish  
11 Captain Ober; were you?

12 A. No, I was not.

13 Q. So you, sir, were going to  
14 take this career captain in the  
15 Pennsylvania State Police who you  
16 told us just previously here was a  
17 fine officer to do the job. And as  
18 Colonel Coury said and you have now  
19 confirmed, it was you who made this  
20 decision?

21 A. Yes, it was.

22 Q. All by your lonesome with some  
23 input from Mr. Wescott, the gentleman  
24 that flew up to see Mr. Williams and  
25 informant of the decision to

227

1 investigate the events of October 5th  
2 of 1998 and what followed. For  
3 purposes of the mere formality of it  
4 you were going to assign Captain Ober  
5 to one or two weeks, you said a pay  
6 period, with IAD before you sent him  
7 out to Washington to help with the  
8 National Governors' Conference, was  
9 that it?

10 A. That's it.

11 Q. If I represented to you that  
12 to the best of my knowledge, it was  
13 January 26th, 2000, that Mr. Ober  
14 made known a legal action that he  
15 filed in Commonwealth court against  
16 the Pennsylvania State Police seeking  
17 prospective relief, are there any  
18 facts known to you that contradict  
19 that as you sit here today?

20 A. Do you mean contradict when he  
21 filed the injunction?

22 Q. Yes, sir.

23 A. Not that I'm aware of.

24 Q. When did you make a decision  
25 that he would sit tight at IIMS

228

1 detached from BPR, IAD division and  
2 not go to Washington?

3 A. Probably after the injunction  
4 was filed.

5 Q. Sir, wasn't that after the  
6 report date that you had given him to  
7 IAD for the formality of just being  
8 there for a short while, sir?

9 A. I don't know what that date  
10 is, so I don't know.

11 Q. You needed him at IIMS; didn't  
12 you?

13 A. To complete that project, yes  
14 sir.

15 Q. Yes, sir, you did. Yes, sir.  
16 I agree with that. And Mr. Ober  
17 never actually went back to IAD; did  
18 he, sir?

19 A. I don't believe that he did.

20 Q. And, sir, he never went to  
21 Washington; did he?

22 A. He did not.

23 Q. Now, did he not go to  
24 Washington because you are a  
25 compassionate man?

229

1 A. He did not go to Washington  
2 because of the injunction and the  
3 settlement of the injunction.

4 Q. Why did you settle it, sir?

5 A. Because I didn't want to  
6 prolong the assignment of an  
7 individual to assist Major Zipinka.  
8 Lieutenant Colonel Wescott was  
9 insistent that somebody get out there  
10 as soon as possible. He wanted  
11 somebody out there helping him. And  
12 you have to remember that at the  
13 beginning of December, Seattle  
14 exploded with the World Trade  
15 Organization demonstrations. States  
16 of emergency were declared, the  
17 National Guard was called out, the  
18 curfews were imposed and Colonel  
19 Wescott was insistent that we not be  
20 caught in the same situation that  
21 Seattle PD was caught in.

22 Q. What's that have to do with  
23 Captain Ober? Mr. Coury's come in  
24 here and testified for about a half  
25 hour, and then we got into some

230

1 different things, but --- about how  
2 this gentleman, Captain Ober, was  
3 operationally deficit experience  
4 wise, not ability wise, but  
5 experience wise. So how does that  
6 integrate with this alleged need  
7 because of Seattle in Washington?

8 A. Colonel Coury was not Deputy  
9 of OPS at that time, Colonel Wescott  
10 was. And it was Colonel Wescott's  
11 recommendation with my concurrence  
12 that the captain go there, that he  
13 could do that job working with Major  
14 Zipinka.

15 Q. Okay. Fair to say then that  
16 Mr. Wescott may not, I mean, we can  
17 only speculate, I guess, but  
18 apparently did not entertain  
19 viewpoints as to Captain Ober's  
20 alleged operational deficiencies,  
21 that he didn't feel that way about  
22 Captain Ober or he wouldn't have  
23 recommended him for that assignment?

24 A. I'm not sure what he testified  
25 to, what his thoughts were. It seems

231

1 to me that they're consistent with  
2 Lieutenant Colonel Coury's.

3 Q. He wanted to get his --- he  
4 wanted Captain Ober to get his feet  
5 wet in a combat situation then; is  
6 that right?

7 A. He needed somebody out there  
8 to work with Major Zipinka to make  
9 sure that what happened in Seattle,  
10 at least that's my understanding and  
11 my feeling, as to what happened in  
12 Seattle didn't happen in State  
13 College.

14 Q. You mean Pittsburgh, or ---  
15 oh, it was State College.

16 A. State College.

17 Q. Well, say Zipinka was really  
18 fired up, needed somebody?

19 A. No. This was Lieutenant  
20 Colonel Wescott's decision.

21 Q. Yes, but didn't you say  
22 Zipinka really needed somebody or did  
23 I misunderstand?

24 A. Zipinka needed somebody  
25 according to Lieutenant Colonel

232

1 Wescott's estimation.

2 Q. Oh, okay. So Zipinka wasn't  
3 making this demand or anything like  
4 that? It was Colonel Wescott's  
5 opinion that he needed him?

6 A. It was Colonel's Wescott's  
7 opinion.

8 Q. So you promoted Young and put  
9 Young out there?

10 A. Yes, I did.

11 Q. And when did you promote Mr.  
12 Young to Captain? He was a  
13 lieutenant; right?

14 A. Yes, he was. Probably  
15 sometime in January.

16 Q. And you sent him out there.  
17 Did he want to go?

18 A. I don't know whether he wanted  
19 to go or not.

20 Q. Well, did you talk to him at  
21 all before he went?

22 A. I normally talk to officers  
23 that I promote. If I talked to him I  
24 would have offered him the position  
25 of captain with the caveat that it

233

1 would be assigned to Major Zipinka to  
2 help out there.

3 Q. That's what I mean. That's  
4 what I'm asking about.

5 A. And I probably would have  
6 talked to him, but I'm not sure.

7 Q. Okay. Colonel, are you  
8 telling me that if you'd have talked  
9 to Mr. Young and Mr. Young had said,  
10 not yet, don't want to do that, would  
11 you have still promoted him and sent  
12 him to Washington against his wishes?

13 A. I would not have promoted him,  
14 no.

15 Q. Okay. Darrell Ober files his  
16 injunction. Did that upset you?

17 A. No.

18 Q. How did you feel about it?

19 A. Neutral.

20 Q. Why did you relent and agree  
21 to settle on it?

22 A. We settled this case because I  
23 didn't want to prolong the  
24 assignment, somebody going out to  
25 assist Major Zipinka. I didn't know

234

1 how long that court case might take.

2 Q. Okay. See, I understand that  
3 and I understand you testified to  
4 that and I wasn't sure I heard you  
5 right. But I don't understand why  
6 the one requires the other one. In  
7 other words, I can understand the  
8 following. This captain, Captain  
9 Ober, files this injunctive thing  
10 about being transferred out there.  
11 Okay? You don't want to prolong the  
12 problem. Why does agreeing with his  
13 injunction have anything to do with  
14 prolonging the problem if you're  
15 going to get somebody else for it  
16 anyway?

17 In other words, you know, go  
18 ahead and fight the injunction and  
19 win. It doesn't mean you have to  
20 send him, but you can certainly win  
21 the legal action being that you can't  
22 be prevented from doing it. It  
23 doesn't mean you have to go through  
24 with it. I don't understand why  
25 settling that would solve your

235

1 problem with the National Governor's  
2 Conference.

3 A. I wasn't going to put on hold  
4 sending somebody out there to work  
5 with Major Zipinka.

6 Q. Of course not. You don't even  
7 know how long the legal wrangling  
8 will take.

9 A. And that's the point of my  
10 answer.

11 Q. I still don't understand but I  
12 understand that's your answer. I  
13 don't understand why --- that's your  
14 answer, that's your answer.

15 A. It's the best I can articulate  
16 it.

17 Q. Yes, sir. Sir, did Captain  
18 Ober argue that the transfer was  
19 punitive in nature?

20 A. Not that I know of.

21 Q. Do you think it was punitive  
22 in nature?

23 A. No.

24 Q. Do you think it was a career  
25 enhancing move?

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1 A. I didn't look at it either  
2 way, as career enhancing or not. I  
3 knew there was need out there and I  
4 agreed with Colonel Wescott.

5 Q. You don't have a duty to, at  
6 all, look at officers in terms of  
7 career enhancement? You look at it  
8 in terms of what the needs of the  
9 Pennsylvania State Police are; right?

10 A. That's exactly what I did.

11 Q. And you're telling us that  
12 Ober was needed out there because  
13 according to you the IIMS thing had  
14 come to a conclusion, which you say  
15 you got from Hikus; right?

16 A. That is correct.

17 Q. So he's available?

18 A. That is correct.

19 Q. Well, after you decided not to  
20 prolong the legal thing and gave in  
21 --- is it fair to say you gave in on  
22 the legal thing?

23 A. I think we settled the  
24 injunction.

25 Q. Those words are --- you

237

1 settled the injunction. You choose  
2 your words. You settled the  
3 injunction. And after you settled  
4 the injunction Ober's still  
5 available; right?

6 A. Yes, he was.

7 Q. So you put him in a  
8 lieutenant's position in LCE; didn't  
9 you?

10 A. I have a major that is the  
11 director of the Bureau of  
12 Professional Responsibility that had  
13 asked that he not be returned there.  
14 And I did the same thing with Captain  
15 Ober that I did with Captain Transue.

16 Q. Put him into a lieutenant's  
17 position?

18 A. Captain Transue was not  
19 reassigned to Bureau of Research and  
20 Development because Lieutenant  
21 Colonel Hikus asked that she not be  
22 reassigned there.

23 Q. Sir, Colonel Evanko, aside  
24 from Captain Ober I want you to tell  
25 me how many times in your career as

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1      Commissioner of the Pennsylvania  
2      State Police you placed a captain  
3      --- because the testimony has been  
4      that you made this decision, how many  
5      times have you placed a captain in a  
6      lieutenant's position? Tell us.

7      A.        Only one.

8      Q.        Who?

9      A.        Captain Ober.

10     Q.        Yes, sir, that's correct.

11     A.        And it was consistent with the  
12    court's decision to keep him in the  
13    Harrisburg/Hershey area and there  
14    were no captain vacancies in the area  
15    at that time.

16     Q.        Well, I may be mistaken but  
17    your counsel said --- I mean, they  
18    represented at least that you didn't  
19    lose that thing. You actually won it,  
20    you just settled it or something. I  
21    don't know what the words are, but  
22    you didn't lose it.

23                  ATTORNEY GUIDO:

24                  It was dismissed as  
25                  moot and it's a matter of

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1                   public record. You can read  
2                   the court opinion. The court  
3                   dismissed the case as moot.  
4                   It was the preliminary  
5                   injunction that was settled.  
6                   There was no permanent  
7                   injunction settled, and it was  
8                   dismissed as moot.

9                   BY ATTORNEY BAILEY:

10          Q.        So you're saying --- well,  
11               you've heard what your learned  
12               attorney just said here. Your  
13               position is that that's consistent  
14               with what the court wanted? Is that  
15               the way you looked at it? I go back  
16               to Dan Pellegrini, to Judge  
17               Pellegrini, and I say, sir, you  
18               wanted Ober kept in Harrisburg so bad  
19               that you felt he should have been  
20               assigned to a lieutenant's position  
21               as a captain in LCE; is that correct?

22                   ATTORNEY GUIDO:

23                   I object to the  
24               question because it totally  
25               misconstrues the facts, which

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1                   the court never entertained  
2                   anything in the case. The  
3                   matter was settled, it's of  
4                   record. The matter was  
5                   settled with the Defense  
6                   Counsel and with the  
7                   Plaintiff's Counsel, who we  
8                   agreed that temporary  
9                   injunction would not be going  
10                  forward because we would keep  
11                  the Captain in the Harrisburg/  
12                  Hershey area as a matter of  
13                  public record. And your  
14                  question is misconstruing  
15                  those facts.

16 BY ATTORNEY BAILEY:

17 Q.               Okay. So it wasn't something  
18                  that the court wanted, it was  
19                  something that Mr. Ober wanted?

20 A.               I just know that there was an  
21                  agreement to keep him in the  
22                  Harrisburg, Hershey area.

23 Q.               So you don't know whether it  
24                  was something the court wanted?

25 A.               I thought it was something

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1 that the court wanted, but maybe not.

2 Q. What's PEMA, FEMA, LEMA ---

3 PEMA, Pennsylvania Emergency  
4 Response, or something or other, what  
5 is that?

6 A. Pennsylvania Emergency  
7 Management Agency.

8 Q. I forgot the acronym, I'm  
9 sorry. Do you have a recollection of  
10 Captain Ober ever serving with that  
11 particular agency?

12 A. I have a recollection from  
13 listening to Lieutenant Colonel  
14 Wescott's testimony and your  
15 questioning of him, but that's all.

16 Q. All right. Colonel Evanko,  
17 prior to testimony that you've heard  
18 in this case, do you have any  
19 recollection of Captain Ober  
20 requesting or performing in an  
21 assignment to PEMA?

22 A. No, only through your  
23 questioning of Lieutenant Colonel  
24 Wescott.

25 Q. Have you ever discussed

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1 Captain Ober with Mr. Washington?

2 A. No, I have not.

3 Q. I'm sorry, sir. Leonard  
4 Washington, do you know who I'm  
5 talking about?

6 A. I think you're talking about  
7 Major Washington?

8 Q. Yes, sir, I am.

9 A. No, I have not.

10 Q. Colonel, from an assignment  
11 standpoint, like a responsibility  
12 standpoint, was it Colonel Wescott  
13 who was responsible for PEMA?

14 A. It falls under the Lieutenant  
15 Colonel of Operations, and Lieutenant  
16 Colonel Wescott was in that position  
17 in January of 2000.

18 Q. Okay. So at the times  
19 complained of in the complaint it was  
20 Lieutenant Colonel Wescott who was in  
21 that position?

22 A. As Deputy Commissioner of  
23 Operations, that's correct.

24 Q. Well, I'm going to change just  
25 a little bit, just a couple little

243

1 things here. Do you have an auto  
2 pen?

3 A. Yes, I do.

4 Q. How does it work? It signs  
5 your signature; right?

6 A. Yes, it does.

7 Q. Can you describe it for me?  
8 You put a piece of paper in it and it  
9 signs your name or something?

10 A. I'm not sure that I've ever  
11 seen it operated, but I know that you  
12 put a piece of paper down and it  
13 traces your signature. That's it.

14 Q. Have you ever had occasion to  
15 handle any documents that it signed?

16 A. I would probably get copies of  
17 documents like that.

18 Q. How many shirts have you lost  
19 due to being smeared by the ink on  
20 your auto pen?

21 A. Pardon me?

22 Q. Ever lost any shirts as a  
23 result of getting smeared with ink  
24 from your auto pen?

25 A. I don't know of any that I've

244

1 ever lost.

2 Q. Ever handle documents from  
3 your auto pen, gotten ink on your  
4 hands?

5 A. I don't think. I never did  
6 that, no.

7 Q. Sir, what's the name of your  
8 secretary?

9 A. Mary Bungo.

10 Q. Can you describe for us the  
11 duties that she performs for you.  
12 And after you do that, can you tell  
13 us what authority she has to make  
14 decisions for you?

15 A. She is my confidential  
16 executive secretary and also acts in  
17 the capacity of an executive officer.  
18 She has the authority to route  
19 complaints to decide who will answer  
20 certain letters of complaint, for  
21 example. She has the authority to  
22 auto pen certain documents, to  
23 respond, schedule, to call  
24 legislators. She has a wide range of  
25 authority.

245

1 Q. Does she have the authority to  
2 decide the organizational structure  
3 of the Pennsylvania State Police?  
4 You gave her that authority; didn't  
5 you?

6 A. Tell me what you mean.

7 Q. Didn't you give Mary Bungo the  
8 authority to decide, make the final  
9 decision, on how the Pennsylvania  
10 State Police will be organized and  
11 function?

12 A. No.

13 Q. Are you sure about that?

14 A. Yes.

15 Q. Well, do you ever get  
16 presented with changes for  
17 Pennsylvania State Police  
18 regulations?

19 A. Yes.

20 Q. How do you process those? I  
21 don't care about the rest of the  
22 organization, I want to know how  
23 Colonel Evanko processes them.

24 A. I will get them in final  
25 format signed off by either the

246

1 appropriate deputy or all three  
2 deputies, review it and if I agree  
3 with it, sign it.

4 Q. Mary Bungo doesn't have the  
5 authority to make that decision for  
6 you?

7 A. She has the authority of the  
8 deputy commissioners have already  
9 signed off on it and I'm not  
10 available to auto pen it.

11 Q. Now, after the three have  
12 signed off on it, then it comes to  
13 you?

14 A. Yes.

15 Q. What if it goes back to R&D  
16 for some kind of change, do you  
17 double-check it?

18 A. Do I double-check it before it  
19 comes back or after it comes back?

20 Q. Well, here's my question. If  
21 the three commissioners or three  
22 deputies --- you have three deputies?

23 A. Yes, I do.

24 Q. They're lieutenant colonels?

25 A. That's correct.

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1 Q. If they sign off on an R&D  
2 proposal, do they have the authority  
3 to send it back without you seeing  
4 it?

5 A. Yes, they do.

6 Q. Which one of them does?

7 A. It would depend on whose  
8 jurisdiction it fell under. If it  
9 were an operational decision, Deputy  
10 of Operations, or staff, Lieutenant  
11 Colonel Hikus. Primarily it would be  
12 Lieutenant Colonel Hikus  
13 responsibility because the Bureau of  
14 Research and Development falls under  
15 his authority.

16 Q. Now, if they go back and they  
17 change it and then it comes back to  
18 you, you review it? Or does Mary  
19 Bungo review it?

20 A. If I make a change to it?

21 Q. Yes.

22 A. Then it would come back to me.

23 Q. Who's Sharon? Do you know who  
24 Sharon is in Research and  
25 Development?

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1 A. It is probably the secretary  
2 to the Director of Bureau Research  
3 and Development.

4 Q. Are you familiar with AR-1?

5 A. Yes, I am.

6 Q. When's the last time it was  
7 changed, that you know of?

8 A. I know from these proceedings  
9 that it was changed within the past  
10 year.

11 Q. Well, let's forget these  
12 proceedings. What do you know of its  
13 being changed excluding these  
14 proceedings?

15 A. I don't of any other than  
16 through these proceedings.

17 Q. Colonel, didn't you sign a  
18 change order or did you sign a change  
19 order regarding AR-1, adding AR-1.102  
20 subsection C? Did you add that?

21 A. What is it?

22 Q. It has to do with chain of  
23 command.

24 A. No, I did not.

25 Q. Who did, sir?

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1 A. It was auto-pen need.

2 Q. On your authority?

3 A. No.

4 Q. Whose authority?

5 A. The three deputy  
6 commissioners.

7 Q. If that regulation up for a  
8 change was sent back, was resubmitted  
9 on January 19th, '01 to R&D and then  
10 received for corrections back to R&D  
11 on February 12th, '01, resubmitted to  
12 the front office on February 22nd,  
13 '01 and then sent back signed with a  
14 repo order on February 27, '01, as  
15 you sit here today, you'd have to  
16 say, Mr. Bailey, I really don't know  
17 anything about that. You don't  
18 really know; do you?

19 A. I don't recall knowing  
20 anything about that other than  
21 through these procedures.

22 Q. Sir, was AR-101 subsection C  
23 required for accreditation purposes  
24 for the --- sorry, sir. Sometimes I  
25 get saved from my own question.

250

1 Colonel Evanko, I believe we've had  
2 some representations from somebody in  
3 this litigation, I'm not sure who at  
4 this stage, that subsection C of  
5 AR-1.102 was needed for accreditation  
6 purposes having to do with the  
7 National Group. I'm pretty familiar  
8 with that. I've worked on that quite  
9 a bit. I don't know of that need.  
10 Can you help me?

11 A. I don't know of that need  
12 either.

13 Q. You have a reputation  
14 nationally, do you not, and certainly  
15 in Pennsylvania for being very  
16 concerned about PSP credentials and  
17 about their accreditation to come up  
18 to high standards? I think you're  
19 well known for that; is that fair to  
20 say?

21 A. I think the department is well  
22 known, I don't know if I'm well known  
23 for it.

24 Q. I think you are, I think it's  
25 to your credit. But the point is,

251

1 and let's forget you, the department  
2 is well known, even nationally, for  
3 wanting to meet very high  
4 accreditation standards to be known  
5 as proficient and efficient and  
6 highly qualified, that kind of thing,  
7 as a law enforcement agency; isn't  
8 that fair to say?

9 A. I think that's fair to say.

10 Q. And isn't it fair to say that  
11 it's one of your top priorities, one  
12 of your top concerns, because  
13 obviously it means a great deal  
14 about the quality of the State  
15 Police. Isn't that fair to say?

16 A. It's important to me, my top  
17 concern is the safety of my troopers.

18 Q. All right. But secondary to  
19 the safety of the troopers, that  
20 quality control image, credentials,  
21 capability, those things are high  
22 standards, you set; right?

23 A. I would say that they're in  
24 the top group of what I expect.

25 Q. So you don't know of

252

1 subsection C being an accreditation  
2 requirement?

3 A. I don't know.

4 Q. Now, subsection C, do you know  
5 what I'm talking about?

6 A. From you describing it and  
7 from these actions.

8 Q. Okay. Now, sir, I'm going to  
9 ask a series of questions. I want to  
10 let you know where I'm going right  
11 now because they're very, very  
12 important to this litigation as the  
13 Plaintiff sees it. And they're going  
14 to have to do a subsection C and  
15 they're going to have to do with this  
16 process of changing and approving  
17 AR-1, approving changes to it; okay?  
18 Now, I want to be very careful of  
19 some of the dates and some of the  
20 sequences of events here. When did  
21 you first become aware of subsection  
22 C? Was it during this litigation?

23 A. Yes.

24 Q. Does Ms. Bungo or anyone in  
25 your office give you a list at some

253

1 time --- I used to be auditor  
2 general, I used to be a congressman.  
3 I used to --- my people, from time to  
4 time, were authorized to do different  
5 things on a daily basis and provided  
6 me with a list of things that we did,  
7 of our office product. I assume, as  
8 a Commissioner of the Pennsylvania  
9 State Police, you are told at  
10 periodic times, daily, weekly,  
11 whatever, Colonel, we did this, you  
12 authorized this, you authorized that,  
13 because you can't obviously, sir, you  
14 can't do everything. The fact is you  
15 just can't do everything and  
16 micromanage everything in a day;  
17 correct?

18 A. That's correct.

19 Q. Do you get a list from staff  
20 on what you authorize or what you do  
21 on like a daily or weekly or monthly  
22 basis?

23 A. No.

24 Q. Do you sit down and talk with  
25 Mary Bungo about what goes out under

254

1 your signature?

2 A. I sit down and talk not only  
3 her, but also the deputy  
4 commissioners on a whole host of  
5 things.

6 Q. Did Colonel Coury tell you  
7 about subsection C before you heard  
8 about it in this litigation?

9 A. This is the first time I heard  
10 about it, during this litigation.

11 Q. Okay. So the answer is that  
12 none of the lieutenant colonels, the  
13 staff people, the three top staff  
14 people told you about it and you  
15 heard about it first, subsection C,  
16 in this litigation?

17 A. That is a correct statement.

18 Q. Colonel Evanko, would you be  
19 kind enough, sir, to look at this  
20 document for me? As soon as your  
21 attorneys are done, take a moment to  
22 look at it.

23 ATTORNEY BAILEY:

24 In fact, while they're  
25 looking can we suspend for one

255

1 minute so I can get some  
2 water?

3 VIDEOGRAPHER:

4 It's 2:32 p.m., we're  
5 going to suspend and we're  
6 going to change tapes.

7 SHORT BREAK TAKEN

8 MR. SOLOMON:

9 2:37, back on record,  
10 tape three.

11 ATTORNEY BAILEY:

12 Let the record show  
13 we're back on the ---.

14 VIDEOGRAPHER:

15 It's 2:39 p.m., new  
16 tape, on March 27th, 2002,  
17 the deposition of Mr. Evanko.

18 BY ATTORNEY BAILEY:

19 Q. Colonel, I just showed you and  
20 your attorneys have looked at a  
21 multi-page document.

22 ATTORNEY GUIDO:

23 We need it marked.

24 BY ATTORNEY BAILEY:

25 Q. Is it fair to say that you

256

1 don't know what ---?

2 ATTORNEY GUIDO:

3 Before he answers any  
4 questions, we want the exhibit  
5 marked.

6 ATTORNEY BAILEY:

7 Let me finish.

8 ATTORNEY GUIDO:

9 Colonel, don't answer  
10 until the exhibit is marked.

11 ATTORNEY BAILEY:

12 Let me finish.

13 BY ATTORNEY BAILEY:

14 Q. Is it fair to say that you  
15 don't know what this document is?

16 ATTORNEY GUIDO:

17 Do not answer until the  
18 document has been marked.

19 BY ATTORNEY BAILEY:

20 Q. Colonel Evanko, we've been  
21 given a document that indicates that  
22 you did an e-mail to a gentleman  
23 named Mark Campbell; is that correct?

24 A. Yes, I gave that to you.

25 Q. And it says one, two, three,

1     fourth paragraph down, I am  
2     transferring Captain Darrell Ober  
3     effective 28 January 2000; do you  
4     remember that?

5     A.       Yes, I do.

6     Q.       Why were you telling Mark  
7     Campbell?

8     A.       Because I was keeping him up  
9     to date with preparations for the  
10    National Governors' Association. And  
11    I had told him that I was going to  
12    send somebody out to assist Major  
13    Zipinka in the planning for that  
14    event because it was so big.

15    Q.       Okay. So you had discussed  
16    Captain Ober with Mark Campbell?

17    A.       I told him that I was going to  
18    send Captain Ober out there to help  
19    Major Zipinka.

20    Q.       Did he know who Captain Ober  
21    was?

22    A.       I'm not sure that he did.

23    Q.       Was he interested in who was  
24    going out there?

25    A.       I don't know if he was

1 interested in so much as I was just  
2 trying to keep him up to date.

3 Q. Well, did he ever express an  
4 interest in the kind of person you  
5 wanted out there or what you wanted  
6 them to do?

7 A. No.

8 Q. Well, you said you're  
9 transferring Captain Ober out there,  
10 he knew who Captain Ober was?

11 A. He probably did because I  
12 would have talked to him about  
13 somebody going out there to assist  
14 and that was probably going to be  
15 Captain Ober.

16 Q. Well, you talked to him about  
17 Captain Ober early on, hadn't you,  
18 when the issue came up concerning the  
19 FBI probe?

20 A. I probably did use both  
21 Captain Ober's name and Lieutenant  
22 Colonel Hikus.

23 Q. Now, have you asked Mr.  
24 Campbell whether or not you could or  
25 should investigate the matter?

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1 A. No, I did not.  
2 Q. So your testimony is that Mr.  
3 Campbell provided no input as to  
4 whether or not this matter should be  
5 investigated?

6 A. No, he did not provide any  
7 input.

8 Q. Did you find out at some point  
9 that Mr. Hikus had talked to somebody  
10 in the Governor's Office about this?

11 A. Through his testimony, I did.

12 Q. And you didn't know about it,  
13 I think you testified earlier today  
14 that you didn't know about it before  
15 that?

16 A. That is correct.

17 Q. Do you think it was  
18 inappropriate for him to do that?

19 A. Before he talked to me?

20 Q. Yes.

21 A. Yes.

22 Q. So he should not have talked  
23 to Mary Woolly before he talked to  
24 you; right?

25 A. Yes.

260

1 Q. Now, do you know whether Mary  
2 Woolly had told Mr. Campbell anything  
3 about the discussions that she had  
4 with Mr. Hikus? Do you know whether  
5 Mary Woolly told Mr. Campbell  
6 anything about any conversations she  
7 may have had with Mr. Hikus?

8 A. I do not know.

9 Q. Have you talked with Mr.  
10 Campbell since then?

11 A. I'm sure that I have talked to  
12 him since then.

13 Q. Have you talked to him since  
14 then about this matter?

15 A. No, I have not.

16 Q. Have you talked to him since  
17 then about Colonel Hikus' discussions  
18 with Mary Woolly?

19 A. Have I talked to him about the  
20 discussions with Woolly?

21 Q. Sure.

22 A. No, I have not.

23 Q. Do you know whether Woolly and  
24 Campbell get along?

25 A. No, I do not.

261

1 Q. Do you know why ---?

2 A. I would imagine they do.

3 Q. Why?

4 A. Because they work together.

5 Q. Do you and Hikus get along?

6 A. Yes, we do.

7 Q. Well, have you sat down and

8 taken Mr. Hikus to task for going to

9 Mary Woolly?

10 A. That only happened a couple of

11 days ago, that's the first that I've

12 become aware of it.

13 Q. You haven't had time to sit

14 down with him and discuss it?

15 A. I have not had time to sit

16 down with him and discuss it.

17 Q. Do you plan to sit down with

18 him and discuss it?

19 A. I'm not sure what I'm going to

20 do.

21 Q. Are you going to discipline

22 him for that?

23 A. I'm not sure what I'm going to

24 do in relation to that.

25 Q. Is that not a violation of

262

1 what you have been concerned about in  
2 this case, i.e., a circumvention of  
3 the chain of command?

4 A. Yes, it is.

5 Q. So Colonel Hikus circumvented  
6 the chain of command by reporting a  
7 matter of public concern to Mary  
8 Woolly in the Governor's Office; am I  
9 correct?

10 A. Before he advised me, yes,  
11 sir.

12 Q. Before he advised you, that's  
13 correct?

14 A. Yes, sir.

15 Q. Now, what motivated him to do  
16 that; do you know?

17 A. I have no idea.

18 Q. Is he a supporter of yours?

19 A. What do you mean a supporter?

20 Q. Sir, I've been around politics  
21 a long time and I think you're a  
22 professional. Lieutenant colonels  
23 are chosen for the Pennsylvania State  
24 Police not by you but by the  
25 Governor; am I correct?

263

1 A. They are appointed by the  
2 Governor but selected by me.

3 Q. So you selected Hikus?

4 A. It was my recommendation to  
5 the Chief of Staff. It was my  
6 invitation for Colonel Hikus to  
7 become involved in the competition  
8 for the job and the interview process  
9 for the job.

10 Q. Now, do you have no idea why  
11 Colonel Hikus would betray you and go  
12 to Mary Woolly in the Governor's  
13 Office about such an extremely  
14 sensitive matter and not tell you  
15 first? Because it is a betrayal; is  
16 it not?

17 A. I don't know if it's a  
18 betrayal or not. I don't know what  
19 was in his mind. I don't know why he  
20 would tell someone outside the  
21 department before he told me.

22 Q. Do you have a recollection of  
23 signing a change order for AR-1 on or  
24 about February of 2001?

25 A. No, I do not.

264

1 Q. Do you know if more than one  
2 change order was signed on your  
3 behalf?

4 A. The change orders for  
5 regulations are signed all the time,  
6 so I don't know.

7 Q. So you wouldn't know?

8 A. I don't know.

9 Q. Do you know if there was a  
10 Change 68 and a Change 66?

11 A. I don't know.

12 Q. Have you ever had occasion to  
13 have the ink smear on one of your  
14 signatures on a document that was a  
15 year old, if you can recollect?

16 A. No, I cannot recollect one.

17 Q. Can I --- the document that  
18 you have there, I don't know how the  
19 young lady has that marked. I think  
20 it's Number One.

21 A. Exhibit Number One?

22 Q. Yes, sir. Can I ask you some  
23 questions about Number One?

24 A. Yes, sir.

25 Q. You don't know anything, I

265

1 don't assume, about Special Order  
2 99-102 dated October 7, 1999?

3 A. I'd have to read it and look  
4 at it to tell you.

5 Q. You know you'd probably be  
6 talking about hundreds and hundreds  
7 and hundreds of those kinds of  
8 things. Isn't that ---?

9 A. There's an awful lot of them.

10 Q. Yes. And this one purports to  
11 be a subject about a training  
12 opportunity; right?

13 A. Exhibit One does, yes, sir.

14 Q. And it purports to be a ---  
15 it's routed to the Director of the  
16 Bureau of Personnel; right?

17 A. Yes, it is.

18 Q. And it purports to be from,  
19 and then there's an initial there,  
20 Captain Darrell G. Ober; right?

21 A. No, sir.

22 Q. What is that?

23 A. It is a typewritten name but  
24 with no initial.

25 Q. Okay. And underneath that

266

1 there's a thing that says reference;  
2 right?

3 A. Yes, sir.

4 Q. And there's subsection A;  
5 right?

6 A. There is a subsection A which  
7 is the reference, the special order.

8 Q. To the special order. And the  
9 enclosure is a résumé of  
10 qualifications; right?

11 A. Yes, sir.

12 Q. And then it says on your  
13 document, I request to be considered  
14 for the subject training; right?

15 A. Yes, sir.

16 Q. And then it lists the  
17 requested information is as follows  
18 and it lists some information and it  
19 says, enclosure one is a résumé of my  
20 qualifications, but there's nothing  
21 attached here?

22 A. That is correct.

23 Q. And in the lower left-hand  
24 corner of that document, there's  
25 nothing there; is there?

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1 A. No, sir.

2 Q. Give me just one minute.

3 Colonel, do you know someone named  
4 Becky Brown?

5 A. Yes, I do.

6 Q. What's she do?

7 A. She's the administrative  
8 officer for the executive offices.

9 Q. Do you think you'd know her  
10 writing?

11 A. I have no idea what her  
12 writing is.

13 Q. Okay.

14 A. Mr. Bailey, can I  
15 ask --- you'd ask if you can ask me  
16 about that. Can I ask you to go back  
17 to this Exhibit Number Two?

18 Q. Yes. Just a minute. Okay.  
19 Go ahead.

20 A. Where it is page, I think your  
21 page 7.

22 Q. Okay.

23 A. Under number 2?

24 Q. Yes.

25 A. And the second sentence under

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1 that. The first sentence is, was I a  
2 subject of investigation or any of  
3 lieutenant colonels.

4 Q. Wait a minute. I'm not with  
5 you. Yes.

6 A. And right underneath that it  
7 says, if you were I would have been  
8 told.

9 Q. Right.

10 A. Sure your name was never  
11 mentioned.

12 Q. Yes.

13 A. When you were asking me about  
14 that --- I just want to make sure  
15 that I have the record clear. When  
16 you were asking me about that  
17 statement, if you were I would have  
18 been told that it's accurate and  
19 clear that you understand what I was  
20 referring there. This is Rick  
21 Mascara, the SAC's response to my  
22 question, was I a subject of  
23 investigation or of any lieutenants  
24 colonels. And he said to me, if you  
25 were I, Rick Mascara, would have been

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1 told. I want to make sure that that  
2 was clearly understood.

3 Q. Yes, for what it is worth, I  
4 think that's the way I took it.

5 A. Okay. I wanted to make sure.  
6 I wasn't sure.

7 Q. Yes, I mean, I think that's  
8 the way that I took it. And I think  
9 that when I had asked you to go back  
10 about this area, you go up to the  
11 front part of this form, it says, I  
12 was advised by Lieutenant Colonel  
13 Hikus recently that we, the state  
14 police, were the subject of an FBI  
15 investigation into selling trooper  
16 positions. Do you remember that?

17 A. Yes, I do.

18 Q. And you referred to that when  
19 we came down below here, to go to  
20 this thing, you asked him, was I the  
21 subject of an investigation on any of  
22 the lieutenant colonel's. I think  
23 your response to this, if you were I  
24 would have been told. Your  
25 interpretation of that now is not the

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1 time the way that I took it if I  
2 understand what we're talking about  
3 here, and I had questioned you rather  
4 intensely on this area, is that it  
5 would have been improper for him to  
6 tell you. And your response to  
7 me --- see, I don't think it makes  
8 any difference what Rick meant by  
9 that. Because see, as to Rick, this  
10 is hearsay. I was interested in what  
11 your response was. And my  
12 understanding what your response was  
13 --- I had questioned you about  
14 whether or not that would have been  
15 improper. If Rick meant by that ---  
16 if I had heard of that, I would have  
17 told you putting loyalty above all  
18 things. Remember when I asked you  
19 that?

20 A. Yes, I do.

21 Q. Okay. If I remember  
22 correctly, you didn't indicate to me  
23 that that would have been wrong  
24 unless there was this high degree of  
25 probable cause that implicated you

1 personally. That's my memory; am I  
2 correct?

3 A. Yes. And I just wanted to  
4 make sure that you understood that  
5 when it said, if you were I would  
6 have been told that. That is  
7 Mascara's words.

8 Q. Oh, I understand, that's  
9 Mascara's words.

10 A. Okay.

11 Q. I wasn't interested in that.  
12 I was interested in what you meant by  
13 it and I don't think anything's  
14 changed. What you meant by that, if  
15 I understand it correctly --- you  
16 better make sure this is clear now  
17 because it's an important point to  
18 us. As I understand what you meant  
19 about this, it was a case of unless  
20 there was this high degree of  
21 probable cause about you, in other  
22 words, implicating you personally, a  
23 well developed --- you know, naming  
24 you, that you were a target, you  
25 Colonel Evanko you should have been

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1 told.

2 A. Or the Commissioner.

3 Q. Or the Commissioner. That you  
4 should have been told?

5 A. Yes.

6 Q. And then I questioned you  
7 about an ambiguity about a group,  
8 that sort of thing. And you told me  
9 again unless it's about you, you  
10 should have been told?

11 A. Yes.

12 Q. And I questioned you about  
13 what if it could've involved you, and  
14 you said unless it's this probable  
15 cause, which I defined as a legal  
16 standard meaning I can bring charges  
17 against you, you should've been told.  
18 If I remember correctly, sir, you  
19 agreed with me. Now if you want to  
20 change it you can change it now.

21 A. The only thing I wanted to  
22 make sure is that you understood what  
23 that ---.

24 Q. I don't think it makes any  
25 difference. Mr. Mascara isn't around

1 for some reason. I don't know where  
2 he is. Do you know where he is?

3 A. I have no idea.

4 Q. When is the last time you  
5 talked to him?

6 A. Probably that day.

7 Q. No, you talked to him the next  
8 day; remember?

9 A. The day that ---.

10 Q. Or later that afternoon, you  
11 talked to him again.

12 A. May 20th of 1999.

13 Q. Okay. Thanks. I appreciate  
14 the clarification. Who is Ron Wilt  
15 (phonetic)?

16 A. He is the project manager for  
17 the Instant Information Management  
18 System.

19 Q. Was Captain Ober working with  
20 the IIMS project as late as April  
21 6th, 2000?

22 A. I don't think so.

23 Q. How about the end of March  
24 2000? Was he still working with them  
25 then?

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1 A. I don't know.

2 Q. How about February 2000? Was  
3 he working with them then?

4 A. I'm not sure.

5 Q. Give me just a second, sir.  
6 Have you ever seen this document  
7 here?

8 ATTORNEY GUIDO:

9 Can you hand that to  
10 the court reporter to mark?

11 COURT REPORTER:

12 Marking it as Exhibit  
13 Three.

14 (Deposition Exhibit  
15 Three marked  
16 for identification.)

17 A. No, I have not.

18 BY ATTORNEY BAILEY:

19 Q. You don't know what that is?

20 A. I know what it is but I have  
21 not seen it.

22 Q. Does it say the reason why  
23 Ober wasn't given that assignment?

24 A. Your request, part of this  
25 reads, your request was not received

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1       in the Bureau of Personnel by the  
2       October 22nd, 1999 deadline.

3       Q.       Any facts known to you that  
4       would indicate that that is false on  
5       behalf of Mr. Coury?

6       A.       No, sir.

7       Q.       Or an error?

8       A.       No, sir. In fact, it's not  
9       even initialed off by Lieutenant  
10      Colonel Coury.

11      Q.       Who is it initialed off by?

12      A.       It appears to be Robert Einsel  
13      (phonetic).

14      Q.       Who is Mr. Einsel?

15      A.       Director of the Bureau of  
16      Training and Education.

17      Q.       Who does it purport to be  
18      from?

19      A.       Captain Darrell G. Ober.

20      Q.       Who is it to?

21      A.       Lieutenant Colonel Thomas  
22      Coury.

23      Q.       And who's it from in terms of  
24      the response? Let me see it for just  
25      a second. Did it indicate --- well,

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1 wait a minute. I'll give it back to  
2 you. Just a second. You're not  
3 suggesting it didn't come from  
4 Lieutenant Colonel Coury and that Mr.  
5 Einsel made this up or something; are  
6 you?

7 A. I'm suggesting --- I'm saying  
8 that this is signed off on by  
9 somebody else other than Colonel  
10 Coury. It has his initials, slash,  
11 and it appears to be R.E.

12 Q. Well, is it possible that it  
13 came from Mr. Coury to him and then  
14 he initialed it and gave it to  
15 somebody?

16 A. My experience in this is that  
17 Major Einstel would have probably have  
18 been acting or sitting in for that  
19 day and came across his desk as he  
20 sat there and signed --- I'm sorry.

21 Q. That's okay. We'll talk to  
22 Mr. Coury about it and let him see if  
23 he can explain it or talk about it.  
24 The point is that you don't know  
25 anything about it; right?

1 A. That is correct.

2 Q. What was the --- wasn't it  
3 Major Wertz who made a request of you  
4 to do the transfer move?

5 A. Pardon me?

6 Q. Was there some kind of  
7 relationship here between troopers or  
8 officers, do you know, a personal  
9 type of thing?

10 A. I'm not sure what you're  
11 referring to?

12 Q. Well, involving Transue. Is  
13 that a she by the way?

14 A. It is a female, yes.

15 Q. It is a female.

16 A. She is a female.

17 Q. Okay. All right. Now, she,  
18 the female ---.

19 A. Captain Transue is a female.

20 Q. Captain Transue is a female.  
21 Well, who did you say first told you  
22 about Transue, to maybe put Transue  
23 out on this RNC thing?

24 A. It would have been Lieutenant  
25 Colonel Wescott.

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1 Q. Did Major Wertz play any role  
2 in any of that?

3 A. I think he requested her  
4 assignment or he requested an  
5 assignment of an individual to assist  
6 him fulltime in the preparation of  
7 the RNC.

8 Q. Did Captain Transue have a  
9 love partner or a love friend or  
10 something that you know of, with  
11 anybody?

12 A. Not that I know of. I don't  
13 know her that well.

14 Q. I'm not suggesting you do,  
15 sir, and I didn't mean to imply that.  
16 But do you know of her friendships  
17 with anyone?

18 A. No, I do not.

19 Q. And I don't mean that in a  
20 negative way. Transue was --- how  
21 long before that RCN get together was  
22 she transferred?

23 A. One year.

24 Q. Could it have been a year and  
25 a half?

1 A. No, I thought it was a year.

2 BRIEF INTERRUPTION

3 BY ATTORNEY BAILEY:

4 Q. Remember Colonel Wescott  
5 testifying about being out in San  
6 Diego?

7 A. Yes, I do.

8 Q. Did he discuss that with you?

9 A. About going out there? Yes.

10 Q. Yes. Did he discuss anything  
11 about the discussions and talks he  
12 had out there?

13 A. He would have told me that the  
14 highway patrol and the San Diego  
15 Police, I believe it was, made a  
16 recommendation that you have to have  
17 a full team of people working in this  
18 fulltime, not just part time, because  
19 it's so massive.

20 Q. Who did he talk to? Was it  
21 Arizona or Southern California? Was  
22 it Wertz that he talked to out there  
23 about Ober?

24 A. Pardon me?

25 Q. He talked to Ober about

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1 investigating Ober to somebody out  
2 there. Do you remember?

3 A. In San Diego?

4 Q. Yes. Or in Arizona someplace  
5 or something?

6 A. I think Colonel Wescott talked  
7 about talking to Major Wertz out west  
8 somewhere.

9 Q. That's what I remember. I  
10 just can't remember the details. Did  
11 you ever take Pennsylvania State  
12 Police forces down to Gettysburg?

13 A. No, sir.

14 Q. Did you ever ride the  
15 battlefield down there with anybody?

16 A. Yes, sir.

17 Q. What was that about? No PSP  
18 horses down there?

19 A. I don't think I've ever taken  
20 a Pennsylvania State Police horse  
21 down there.

22 Q. Okay. Do you remember Colonel  
23 Coury, Lieutenant Colonel Coury going  
24 to some FBI classes and then hosting  
25 an event up at the headquarters or

1 something?

2 A. You'd have to be a little more  
3 specific.

4 Q. Purchase of a barbecue machine  
5 or a barbecue device or something.

6 Do you know anything about that?

7 A. I know that several years ago  
8 one was purchased by the academy for  
9 events.

10 Q. Do you know if that was done  
11 for Colonel Coury?

12 A. I don't believe so, but I'm  
13 not positive.

14 Q. Okay. I think we talked about  
15 the swimming events. You don't know  
16 about any swimming events out there,  
17 or lifeguards. I was wondering about  
18 --- I don't remember clearly on this,  
19 maybe you can help me. You were  
20 present for Mr. Wescott's deposition;  
21 right?

22 A. Yes, I was.

23 Q. I thought you testified --- I  
24 may be mistaken, and I want your  
25 attorney to correct me if they

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1 remember. I thought he testified  
2 that o one would ever be promoted in  
3 order to accommodate that National  
4 Governors' Association meeting for  
5 that purpose, that no one would ever  
6 be promoted for that purpose. Do you  
7 have a recollection of him testifying  
8 to that?

9 A. No, I don't.

10 Q. All right. Then I withdraw  
11 the question, sir. Strike the  
12 withdrawal of that question and let  
13 me rephrase it. Do you remember if I  
14 questioned him about that?

15 A. No, I don't remember if you  
16 did or not.

17 Q. You don't remember whether I  
18 questioned him about that or whether  
19 he responded; right?

20 A. No, sir, I don't.

21 Q. By the way, where does Mr.  
22 Young reside?

23 A. In the Philadelphia area.

24 Q. Do you know whether Mr. Wertz  
25 and Mr. Transue date at all?

1 A. I do not know.

2 Q. So you don't know whether ---

3 bottom line, you don't know whether

4 Mr. Wertz had any personal interest?

5 And I'm not indicating that it's

6 improper or that we aren't all human.

7 All I'm asking is whether or not you

8 know Mr. Wertz if he had any kind of

9 personal interest in the transfer of

10 Ms. Transue?

11 A. No, I don't. I don't know

12 either of them personally that well.

13 Q. Okay. I'm just asking you if

14 you have any knowledge of that. And

15 another thing that's confused me,

16 Colonel, and maybe you can help me.

17 When we had Mr. Pudleiner (phonetic)

18 in, we were asking him different

19 questions about the NGA. And when I

20 questioned you earlier about it, you

21 indicated that the NGA was actually

22 centered up in State College; right?

23 A. Yes, sir.

24 Q. Why was Ober being sent to

25 Washington to help with the NGA up in

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1 State College? I don't mean any ---  
2 I've been up to State College  
3 recently about an hour and 15 minutes  
4 from Harrisburg, roads weren't as  
5 good then, I don't think. But you  
6 know, still why would he go out to  
7 Washington to help with something up  
8 in State College?

9 A. That's where the area  
10 commander is headquartered and that's  
11 where the plans were being made.

12 Q. Well, was there anybody  
13 assigned to the NGA from like Altoona  
14 or Blairsville or anything?

15 A. I would imagine there were  
16 several commanders assigned to that  
17 operation because it was so big.

18 Q. But you needed Darrell out in  
19 Washington, PA; right? Little  
20 Washington as its called.

21 A. To assist Major Zipinka  
22 fulltime, yes.

23 Q. Do you know whether Mr.  
24 Zipinka had an immediate need for  
25 Ober out there? I mean like

1 yesterday?

2 A. I know that Colonel Wescott  
3 wanted somebody out there as soon as  
4 he could get somebody out there.

5 Q. Wescott ever tell you why?

6 A. Because Seattle had exploded  
7 with the World Trade Organization  
8 demonstrations. State of emergency  
9 declared curfew, National Guard  
10 called out and he didn't want to ---  
11 make sure that state police reacted  
12 the same way as Seattle, wanted to be  
13 prepared for it.

14 Q. Okay. Was Mr. Ober at one  
15 time, on a book committee, some kind  
16 of a book committee?

17 A. Yes, he was.

18 Q. Why did you take him off?

19 A. I think Lieutenant Colonel  
20 Coury did that.

21 Q. I may be mistaken, sir, but I  
22 think you testified that you did.  
23 You're testifying now that he did?

24 A. Yeah, I think he did. I think  
25 he's the one that --- I probably made

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1 the decision and then he drafted the  
2 correspondence or he made the  
3 decision and I agreed with it. One  
4 of the two, I'm just not sure.

5 Q. Okay. Can you tell us why?

6 A. I don't remember the  
7 circumstances. I think as they  
8 existed Lieutenant Colonel Hikus was  
9 continuing to ask for additional  
10 people assigned to the IIMS project,  
11 he wanted people assigned full-time.  
12 There was a continual request of  
13 officers and troopers and employees  
14 there and they wanted those people  
15 full time. I think that was the  
16 reason.

17 Q. So the reason to take him off  
18 the book committee was he was too  
19 busy?

20 A. I think that's what it was.

21 Q. IIMS was very important and  
22 about --- well, naturally you asked  
23 Captain Ober about that; right? I  
24 mean, the book committee is sort of  
25 extracurricular so to speak; isn't

1 it?

2 A. I think it's during work  
3 hours.

4 Q. Okay. Of course, you  
5 consulted with Captain Ober, you sat  
6 him down and talked with him about  
7 that; right?

8 A. No, I didn't.

9 Q. Well, when did you take him  
10 off the book committee?

11 A. I don't remember.

12 Q. No, not you. If it was you or  
13 Mr. Coury together or Mr. Coury and  
14 you together or however it went, you  
15 don't know when you did that?

16 A. No, I don't.

17 Q. Of course, you're putting Ober  
18 back on the book committee; aren't  
19 you?

20 A. I don't care if he goes back  
21 on the book committee if the head of  
22 the book committee wants him back on  
23 there.

24 Q. You consulted with the head of  
25 the book committee when you took him

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1 off; didn't you Colonel?

2 A. I don't believe that I did.

3 Maybe Colonel Coury did.

4 Q. Well, Colonel, why don't you  
5 tell us when the book's going to e  
6 done, when it's going to be printed  
7 or when that project finishes up?

8 A. 2005.

9 Q. To coincide with the 100-year  
10 history in one of the finest state  
11 police organizations in the entire  
12 nation that prides itself on  
13 integrity and openness; right, sir?

14 A. For the 100th anniversary of  
15 the state police.

16 Q. 2005; right, Colonel Evanko?

17 A. That is correct.

18 Q. Sir, what I would like to do  
19 is ask your erstwhile legal eagles if  
20 we can take a 10-minute break. I  
21 think I might be able to shorten up  
22 what I have to do if I have a chance  
23 to reorganize some of this material.  
24 Because Syndi wants us out of  
25 here --- we all want to be out of

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1 here by five o'clock at the latest.  
2 I know the stenographer does. So  
3 could we take ten? And would you  
4 mind giving me --- shutting off the  
5 microphones and giving me this room a  
6 little bit or a room to work in with  
7 my client? I can go somewhere else.  
8 Is it easier for me to go somewhere  
9 else, or you can just shut this stuff  
10 off? You know what, I don't want to  
11 be in here with the stuff. Can you  
12 give me a little room here somewhere,  
13 Colonel, I can sit in?

14 A. There are two rooms available  
15 right here.

16 Q. Okay.

17 VIDEOGRAPHER:

18 It is 3:18 p.m. and  
19 we're suspending.

20 SHORT BREAK TAKEN

21 VIDEOGRAPHER:

22 It is 3:33 p.m.,  
23 3-27-02, and we're continuing  
24 with the deposition of Colonel  
25 Evanko.

1       BY ATTORNEY BAILEY:

2       Q.       Colonel, let me ask about  
3       here, find the amended complaint. I  
4       just want to go through here by  
5       paragraph and read some allegations  
6       and give you the opportunity to  
7       expound on the reasons why you feel  
8       that they're not correct.

9                  In paragraph 20 --- and bear  
10      in mind that this complaint's  
11      composed by myself, Mr. Ober's  
12      attorney, and that pleading rules  
13      under Federal Rules under Civil  
14      Procedure 8 is as to notice pleading  
15      requirements, which is just called  
16      conclusory pleading. But there are a  
17      lot of inter-related fact allegations  
18      here and I want to run them by you.  
19      It says on or about September 1998  
20      that Darrell Ober was one of the  
21      brightest and best, a rising star in  
22      the Pennsylvania State Police. Do  
23      you dispute that or that he had a  
24      very good-looking career there and  
25      was moving along quite well? Could

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1 you say that, or was he a  
2 subperformer?

3 A. I think he was comparable to  
4 the other captains that we have on  
5 the state police.

6 Q. Okay. It says in here on May  
7 2nd, 1998, Captain Ober was named as  
8 Director of Internal Affairs Division  
9 and later in early September he was  
10 named as acting Bureau Director of  
11 the Pennsylvania State Police of  
12 Bureau of Professional  
13 Responsibility. Does that square  
14 with your recollection? I'm sorry.

15 ATTORNEY GUIDO:

16 Could you just give us  
17 some paragraph reference?

18 ATTORNEY BAILEY:

19 Sure. Paragraph 21.

20 I'm sorry.

21 ATTORNEY GUIDO:

22 Thank you.

23 BY ATTORNEY BAILEY:

24 Q. Does that square with your  
25 recollection, sir?

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1 A. There was a period of 12  
2 working days that Captain Ober was  
3 the Director of Bureau of  
4 Professional Responsibility, but I  
5 don't know the dates.

6 Q. Okay. Now, it says this  
7 career path is customarily associated  
8 in the state police with advancement  
9 for the various highest ranks in the  
10 organization including commissioner.  
11 And I've looked at your own career  
12 and researched on this case, it seems  
13 to be more or less consistent the  
14 same way. Is that a good career  
15 path, at least, the kind of  
16 experience up until October of 1998  
17 that Captain Ober had for advancement  
18 or movement?

19 A. I would not characterize  
20 assignment to BPR in that way.

21 Q. Okay.

22 A. I would look at assignments to  
23 LCE, for example, Colonel Walp was in  
24 LCE, Lieutenant Colonel Hikus was in  
25 LCE.

1 Q. And you'd look at LCE as a  
2 place where a captain filling a  
3 lieutenant's position would be an  
4 indication of skill and ability?

5 A. For the three months that he  
6 was there until a captain's vacancy  
7 opened up in LCE.

8 Q. Now, in paragraph 31 an  
9 allegation is made that I think you  
10 responded to at least part of this.  
11 On being told that the investigation  
12 by Plaintiff and Lieutenant Colonel  
13 Hikus, Defendant Evanko exploded in a  
14 fit of rage. Exploded in a fit of  
15 rage, is that a description of what  
16 you did?

17 A. No, it is not. The captain  
18 has used at various times, irate,  
19 upset, angry and this verbiage here  
20 and that is not accurate.

21 Q. He told Hikus and the  
22 Plaintiff, Darrell Ober, that quote I  
23 will have Louie Freeh, Director of  
24 the FBI on the phone tonight and have  
25 the agents involved transferred by

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1 tomorrow. Now, that's Captain Ober's  
2 allegation. You heard the testimony  
3 of Lieutenant Colonel Hikus. If I  
4 understand your testimony, you didn't  
5 say anything like that.

6 A. That is not true.

7 Q. So these two Pennsylvania  
8 State Police officers, a lieutenant  
9 colonel and a captain, have agreed  
10 upon a lie and that lie is reflected  
11 in this complaint?

12 A. I'm saying that I never said  
13 that and I didn't hear Lieutenant  
14 Colonel Hikus say that either. And I  
15 didn't say it.

16 Q. All right. What do you  
17 remember Lieutenant Colonel Hikus  
18 saying then?

19 A. I'm not sure what it was but  
20 it wasn't that.

21 Q. Paragraph 33 says, subsequent  
22 to learning about the FBI  
23 investigation, Colonel Evanko sought  
24 the personal and official approval of  
25 the Defendant Mark Campbell, to begin

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1 an investigation into Captain Ober.  
2 Your testimony is that that is simply  
3 not accurate or correct; is that fair  
4 to say?

5 A. That is not true.

6 Q. Okay. You don't deny that  
7 Campbell was an assistant to the  
8 Pennsylvania --- was an assistant or  
9 some sort of high staff position on  
10 the Pennsylvania Governor Chief of  
11 Staff though, that was true?

12 A. He was a Deputy Chief of  
13 Staff.

14 Q. Deputy Chief of Staff. Okay.  
15 Paragraph 34 says that the time that  
16 Campbell and Evanko conferred on  
17 investigating Ober you've already  
18 indicated that --- well, did you and  
19 Campbell talk about investigating  
20 Ober, number one, or number two, the  
21 circumstances surrounding the FBI  
22 problem?

23 A. I would have told Mr. Campbell  
24 that I was going to do an  
25 administrative inquiry or inquiry

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1 into the facts of this. That would  
2 have been the extent of it.

3 Q. So you wouldn't have said I  
4 was going to investigate Hikus or  
5 Ober or those fellows or anything  
6 like that, you would have told him  
7 --- there is a difference between  
8 would have and what you remember, but  
9 your testimony here today is that you  
10 would have told him that you were  
11 going to look into the circumstances?

12 A. That's what I recall talking  
13 to him about.

14 Q. That's different. Okay. You  
15 do recall talking to him about that  
16 and saying that you're going to look  
17 into the circumstances?

18 A. Yes, I do.

19 Q. Now, at that time did you  
20 suspect Ober of having committed a  
21 wrong at the time you talked to Mark  
22 Campbell?

23 A. Other than going past his  
24 major and BPR, I didn't know what to  
25 think.

297

1 Q. So the allegation here is that  
2 you and Campbell, we're really  
3 talking about you now or asking about  
4 you now, knew that Ober committed no  
5 wrong, had broken no law and had  
6 violated no regulation practice or  
7 custom in the Pennsylvania State  
8 Police. That allegation here is  
9 inaccurate because you didn't know  
10 what had happened and although it may  
11 not have been a violation of  
12 regulation you felt that Ober had  
13 committed a wrong by circumventing  
14 Mr. Conley and going to Hikus?

15 A. Yes, I did.

16 Q. Okay. Do you want to read  
17 paragraph 35? It is not intended to  
18 inflame or upset you, please. It's  
19 not meant to be argumentative. I'm  
20 going to read it and I want you to  
21 tell me if it's accurate. Paragraph  
22 35, nonetheless, in order to punish  
23 Ober because he had followed proper  
24 PSP procedure, obeyed the law and  
25 conducted himself in a spirit,

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1 supportive of proper law enforcement  
2 duties and practices consistent with  
3 his oath as opposed to demonstrating  
4 blind devotion, obedience and  
5 subservience to the personal and  
6 political interest and concerns of  
7 the Defendants, both Evanko and  
8 Campbell, eliminating Campbell from  
9 this now by virtue of assuming the  
10 information you've given us is  
11 accurate. So it would read, Evanko  
12 decided to use Ober as an example to  
13 PSP Officers and members to show that  
14 obedience to the political  
15 sensitivity of the Pennsylvania State  
16 Police leader and his political  
17 mentors is a necessity regardless of  
18 what the law may require even if that  
19 leader himself is a target or  
20 potential target of an official law  
21 enforcement agency investigation  
22 himself. That is simply untrue?  
23 A. Yes, it is untrue.  
24 Q. Okay. Now, under the heading  
25 investigation on page 10 of the

299

1 complaint, paragraph 37 reads,  
2 investigations such as those done on  
3 Captain Ober had the effect of  
4 destroying an officer's standing and  
5 reputation among his colleagues. Do  
6 you believe that to be true?

7 A. No, I don't.

8 Q. Hey becomes shunned and is  
9 subjected to insults and is  
10 ostracized. Do you believe that can  
11 happen, or have you ever known it to  
12 happen?

13 A. No, I do not know it to have  
14 happened. And I don't believe it  
15 happened here.

16 Q. Okay. Why don't you believe  
17 it happened here?

18 A. Because I haven't seen it.

19 Q. So you don't know whether it's  
20 happened here. You just haven't seen  
21 it?

22 A. I haven't seen it, and I don't  
23 believe it to have happened.

24 Q. All right. Plaintiff was  
25 subjected to an unlawful and improper

300

1 investigation. It's fair to say you  
2 do not agree with that?

3 A. That is fair.

4 Q. At the direction of Evanko and  
5 Campbell --- Campbell, according to  
6 you, didn't order any investigation  
7 or approve one but you at least did  
8 order an investigation.

9 A. I ordered an administrative  
10 inquiry.

11 Q. An administrative inquiry.  
12 These investigations were conducted  
13 for two unlawful reasons. We know  
14 you do not agree with that. You  
15 don't have to respond, of course.  
16 You've already denied that. The  
17 first was to learn the breadth and  
18 depth of Ober's knowledge about the  
19 FBI investigation. Now, was there  
20 any purpose in ascertaining Ober's  
21 knowledge about the FBI  
22 investigation?

23 A. I wanted to know all of the  
24 circumstances from all of the  
25 involved parties in this incident.

301

1 Q. And whether Evanko and someone  
2 in the Governor's Office was a target  
3 or actually under suspicion. Well,  
4 you were concerned about that? The  
5 record's replete with numerous  
6 references ---.

7 A. That I was what?

8 Q. Well, here's the allegations.  
9 The first was to learn the breadth  
10 and depth of Ober's knowledge about  
11 the FBI investigation, you've already  
12 responded to that. And whether  
13 Evanko and someone in the Governor's  
14 Office was a target or actually under  
15 suspicion, that was not a purpose?

16 A. My concern would have been to  
17 try to determine why the FBI or  
18 Lieutenant Colonel Hikus didn't tell  
19 me. So I guess in a way that would  
20 be accurate.

21 Q. Thank you. And the second was  
22 to harass and injure Ober as a way to  
23 send a signal to others that the  
24 Defendants as a leadership cadre  
25 require the obedience even the

302

1       unlawful obedience of PSP members,  
2       above all other considerations as an  
3       unwritten term and condition of  
4       employment. Now, clearly you would  
5       not agree with that?

6       A.       I would not agree with that  
7       and I will go back to the last  
8       question. I would agree to that as  
9       far as I am concerned but not the  
10      Governor's Office.

11      Q.       And the last sentence --- I  
12      guess that's not real helpful here.  
13      Okay. Now, paragraph 39 reads,  
14      towards the end after the meeting  
15      that you had in your office, the  
16      following. That the meeting in your  
17      office in which --- well, let's clear  
18      that up first. Paragraph 39 says  
19      that there was a meeting following  
20      Colonel Evanko's meeting with Mark  
21      Campbell. We've already indicated it  
22      was a phone call and not a meeting;  
23      right?

24      A.       That's correct.

25      Q.       Where Evanko secured

1 permission to investigate the  
2 Plaintiff. You already said that did  
3 not occur?

4 A. That did not occur.

5 Q. Because Evanko proceed to  
6 harass Plaintiff have others such as  
7 the Defendants Conley, Coury, and  
8 Wescott harass him. Now, clearly you  
9 don't agree with that? That is not  
10 correct?

11 A. That is not correct.

12 Q. And have him, meaning Ober,  
13 officially investigated despite the  
14 fact that Evanko was told he should  
15 not conduct an investigation. Now,  
16 your investigation into Ober ---  
17 strike that.

18 Your investigation into the  
19 facts and circumstances as you put  
20 it, we feel it was into Darrell Ober  
21 and respectfully disagree with you on  
22 that. But we understand your  
23 position and assuming your  
24 definition, the investigation into  
25 the facts and circumstance of the FBI

304

1 probe, the allegation here is that  
2 you were told that it was not proper,  
3 that investigation. There being no  
4 cause for such an inquiry as required  
5 by PSP policies and rules and by both  
6 the Pennsylvania and the United  
7 States Constitution. Mr. Coury  
8 didn't tell you that?

9 Q. The only thing Colonel Coury  
10 told me was that this is not a ---  
11 when I said about assigning BPR  
12 investigators? This is not a BPR  
13 issue, it should be an administrative  
14 inquiry.

15 Q. So he was behind the  
16 investigation but he said it should  
17 be an administrative inquiry?

18 A. It's not a BPR issue and don't  
19 assign BPR investigators to it.

20 Q. Why did Captain Brown, in July  
21 20th, 1999, put a BPR number on it?  
22 Why did he do that? Did you tell him  
23 to do that?

24 A. No, I did not tell him.

25 Q. Then why did he do it? Do you

305

1 know why he did it? Did you ever ask  
2 him?

3 A. No, I never asked him and I  
4 don't know why he put a number on it.

5 Q. Sir, when Mr. Williams talked  
6 to Mr. Brown, we've got testimony on  
7 this, they talked about this issue,  
8 the nature of this inquiry. We have  
9 a deposition from Mr. Brown. You're  
10 welcome to read it. I assume you  
11 have, I don't know.

12 A. No, I have not.

13 Q. All right, sir. Was the thing  
14 ever a BPR investigation, Colonel?

15 A. No, it was not.

16 Q. It was not?

17 A. It was not.

18 Q. It was not, but Captain Brown  
19 gave it a BPR number. Who --- why  
20 did he do that? Who authorized him  
21 to do that? What was the reason for  
22 that; do you know?

23 A. I can speculate as to what it  
24 is.

25 Q. Then tell me.

306

1 A. As a tracking number.

2 Q. As a tracking number.

3 A. That's the only reason I could  
4 possibly think of.

5 Q. It wasn't to cover; was it?

6 A. Pardon me?

7 Q. It was to provide cover; was  
8 it?

9 A. I don't know what you mean.

10 Q. Colonel Conley ever talk to  
11 you about this thing as a BPR with a  
12 BPR number?

13 A. No, sir.

14 Q. Did you ever discuss Captain  
15 Ober with Colonel Conley that you can  
16 remember?

17 A. I think anything that I  
18 discussed about Captain Ober was with  
19 Lieutenant Colonel Coury? Although  
20 Captain Conley has an STD directed to  
21 me that he says he talked to me, but  
22 I don't recall any direct  
23 conversations.

24 Q. Sir, I'm sorry, what was that  
25 again?

307

1 A. What's the question again?

2 ATTORNEY CHRISTIE:

3 It can be read back if  
4 you want the court reporter  
5 --- the answer's on the  
6 record.

7 ATTORNEY BAILEY:

8 No, no, let me go on to  
9 another question. I'm sorry  
10 ma'am. I'm sorry, I  
11 interrupted you.

12 ATTORNEY CHRISTIE:

13 That's all right.

14 ATTORNEY BAILEY:

15 Okay.

16 ATTORNEY CHRISTIE:

17 I'm finished.

18 BY ATTORNEY BAILEY:

19 Q. Let me go on to another  
20 question. When we talked to Captain  
21 Brown, I think, he indicated that he  
22 spoke with Major Conley at the  
23 request of Commissioner Evanko.  
24 Something about the investigation  
25 ascertaining facts, no personnel

308

1 action involved. Do you remember  
2 that?

3 A. No, I do not.

4 Q. Well, it says on February 14th  
5 of '01 that you forwarded a copy of  
6 the worksheet to the commissioner.

7 What's that about? Do you know what  
8 that's about, why you requested that?

9 A. What is it again?

10 Q. Well, my understand is that  
11 sometime on or about the 14th of  
12 February of 2001, I want you to bear  
13 in mind that the lawsuit was filed on  
14 January 14, '01, I think it was. Why  
15 did you request a worksheet from  
16 Captain Brown?

17 A. I don't remember that I did  
18 request one.

19 Q. Okay. Was this an  
20 investigation that went into the  
21 events --- was it an investigation  
22 into the FBI at all?

23 A. In so much as what they had  
24 told Captain Ober.

25 Q. In fact that's why Ober is

309

1 mentioned, isn't he, during those  
2 notes that you took of the discussion  
3 with Mr. Mascara?

4 A. I'm not sure I know what you  
5 mean.

6 Q. Well, the notes speak for  
7 themselves, Captain Ober was  
8 discussed. Paragraph 50, page 16,  
9 there's a number of allegations in  
10 there, but it erroneously indicates  
11 that Ober was returned to IAD as  
12 Director of Internal Affairs for five  
13 days before transferring him to Troop  
14 B, Washington. Let me tell you why I  
15 am asking this question. You'd  
16 indicated it was for a pay period ---  
17 at least your recollection is it was  
18 a pay period, two weeks?

19 A. I thought that's what it was,  
20 yes.

21 Q. Okay. You don't have a  
22 recollection of it ever being for a  
23 period --- I know it didn't take  
24 place, but a recollection of it ever  
25 being for five days?

310

1 A. Other than listening to  
2 Lieutenant Colonel Conley during his  
3 deposition.

4 Q. Do historical files have  
5 references to the research that's  
6 done on them, the recommended  
7 changes, drafts of changes and that  
8 kind of thing in your experience?

9 A. I don't have any experience  
10 with historical files at all.

11 Q. Boy, are you lucky. That's  
12 very interesting. Have you never in  
13 terms of any of the changes to  
14 Pennsylvania State Police  
15 Regulations, you have never reviewed  
16 or looked at a historic file?

17 A. That is correct.

18 Q. In all of the time that you  
19 have been with the Pennsylvania State  
20 Police where there has been a change  
21 in regulations, have you ever looked  
22 at what it was like --- you had done  
23 a before and after comparison?

24 A. Of the actual regulation?

25 Q. Yes, sir.

311

1 A. I've probably looked at before  
2 and after regulations, what was in  
3 existence at a particular time and  
4 what a new one would say.

5 Q. But you don't have a  
6 particular recollection of when or  
7 which one?

8 A. Throughout my career I would  
9 have done that.

10 Q. You didn't do it with AR  
11 1.102(c), though?

12 A. After the Amended Complaint or  
13 after I found out about it through  
14 these procedures I looked at it.

15 Q. Okay. And what conclusions  
16 did you reach?

17 A. I didn't reach any.

18 Q. First darn time you saw them;  
19 isn't it? First time you recollect  
20 you seeing those proposed changes or  
21 the so-called change that took place;  
22 isn't it, Colonel?

23 A. That is correct.

24 Q. On page 18, paragraph 55, the  
25 allegation is that a representation

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1 that was made to Plaintiff and his  
2 Counsel was false. And it says that  
3 AR 1-1-02 had just been changed on  
4 February 22nd, 2001 and was  
5 personally approved by the Defendant  
6 Evanko according to file documents.  
7 The word personally in there is not  
8 correct, that is an error?

9 A. That is incorrect.

10 Q. All right, sir. Let's talk  
11 about Field Regulation 1-1.17(b).  
12 And we can finish this up I think  
13 fairly quickly. I want to read a  
14 paragraph to you out of the Amended  
15 Complaint appearing on page 19, sir.  
16 Reads as follows, additionally FR,  
17 Field Regulation, 1-1.17(b) is  
18 misrepresented to the court on page  
19 12 of the motion to dismiss as quote,  
20 requiring members to properly notify  
21 their supervisor when they receive  
22 any information indicating another  
23 member, quote, unquote, might have  
24 violated the law. You have a  
25 familiarity with the language --- I

313

1 mean you referred to it here earlier  
2 in the deposition a couple of times.  
3 Do you remember offhand if --- do you  
4 have a commanding knowledge of its  
5 verbiage, of the words?

6 A. I think that's an accurate  
7 representation of its contents.

8 Q. And the word might is  
9 underlined. It says emphasis added.  
10 The subject field regulation, this is  
11 in the allegation, paragraph 59. It  
12 says, the subject field regulation  
13 uses the word and phraseology has,  
14 which is underlined, violated any  
15 law, rule, regulation or order  
16 emphasis added. It does not use the  
17 word might. Do you agree or  
18 disagree, or do you know?

19 A. You lost me on the two  
20 different ---.

21 Q. Well, I'll let you read it.  
22 Read paragraph 59 until your heart's  
23 content. If you know the answer ---  
24 and if you don't --- I mean, I  
25 realize it's a technical question.

314

1 I'm not trying to be unfair, but tell  
2 me if you know.

3 A. I thought it says might have  
4 violated the law. I thought that's  
5 the way the regulation says.

6 ATTORNEY GUIDO:

7 Well, the regulation  
8 speaks for itself.

9 ATTORNEY BAILEY:

10 Yes, I mean, it does.  
11 It really does. It doesn't  
12 matter what any of us  
13 attorneys say.

14 BY ATTORNEY BAILEY:

15 Q. But it does matter what you  
16 recollect.

17 A. I thought it said might.

18 Q. You thought it said might?

19 A. Yes, I thought it says might.

20 Q. When is the last time you  
21 reviewed it?

22 A. Prior to coming up for this  
23 deposition.

24 Q. Okay. You don't have a copy  
25 handy; do you?

315

1 A. No, I don't.

2 Q. See if I could get a copy for  
3 just one second, because I may be  
4 wrong and I don't want to ---.

5 ATTORNEY BAILEY:

6 Just suspend for one  
7 minute.

8 MR. SOLOMON:

9 It's 3:58 p.m., off  
10 record.

11 VIDEOGRAPHER:

12 It's 4:00 p.m., we're  
13 suspending.

14 SHORT BREAK TAKEN

15 VIDEOGRAPHER:

16 It is now 4:04 p.m.,  
17 we're back on the record.

18 BY ATTORNEY BAILEY:

19 Q. Colonel, I'd like to read to  
20 you Field Regulation 1-1 ---.

21 BRIEF INTERRUPTION

22 ATTORNEY BAILEY:

23 Strike all of my former  
24 comments until the  
25 stenographer is ready, please.

316

1           We're back on the record now.  
2           Please, strike anything  
3           in between when we resumed on  
4           the record because of my error  
5           in not waiting until the  
6           stenographer was able to mark  
7           the document involved here.

8        BY ATTORNEY BAILEY:

9        Q.       Sir, can you identify for us  
10      --- Colonel Evanko, can you identify  
11      for us the document that is in front  
12      of you?

13      A.       It's a copy of FR 1-1 dated  
14      March 25, 1992.

15      Q.       And I just want to read into  
16      the record very briefly under 1.1  
17      Section 1.17, Recording of  
18      Information, Subsection B, which is  
19      the part of the field regulation  
20      referred to in paragraph 59. Then I  
21      just want to ask you to comment if  
22      you would. It says, members shall  
23      promptly report to their supervisor  
24      any information which comes to their  
25      attention and which tends to indicate

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1 that any other member or employee  
2 has, I want to emphasize the word  
3 has, last word, third line, violated  
4 any law, rule, regulation or order.  
5 I realize I was asking you earlier to  
6 comment from memory, which is awfully  
7 difficult. And in light of paragraph  
8 59 in that regulation, unless it's  
9 been changed, can you tell me if it  
10 has?

11 A. I don't know. That would be  
12 my first question, what was in effect  
13 in September October of 1998.

14 Q. Okay.

15 ATTORNEY GUIDO:

16 Counsel, we'll  
17 stipulate that this is the  
18 correct version of the  
19 regulation, that this is the  
20 one that was in effect.

21 However, I would like the  
22 question to be clarified when  
23 you're referring to paragraph  
24 59. I don't have the  
25 complaint, Amended Complaint,

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1           in front of me. My  
2         recollection is that you're  
3         referring --- the reference is  
4         to a brief which I wrote in  
5         which I paraphrased what the  
6         regulation says, which says  
7         that any information which  
8         tends to indicate that an  
9         employee has violated any  
10       laws. So I just want to make  
11       sure the question is clarified  
12       as to what the reference in  
13       the Amended Complaint is to.

14           ATTORNEY BAILEY:

15           I'll read paragraph 59  
16         into the record then.

17           BY ATTORNEY BAILEY:

18       Q.       It says, additionally FR  
19       1 - 1 . 17 (b) is misrepresented to the  
20       Court on page 12 of the Motion to  
21       Dismiss. Here the acronym MTD is  
22       used, as requiring, quote, requiring  
23       members to promptly notify their  
24       supervisor when they receive any  
25       information indicating that another

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1 member might, it is in quotes  
2 underlined, have violated the law,  
3 closed quote. Emphasis added,  
4 period. The subject field regulation,  
5 the acronym FR is used, uses the  
6 words and phraseology quote, has,  
7 underlined for emphasis, violated any  
8 law, rule, regulation or order,  
9 closed quote. Emphasis added,  
10 period. It does not use the word  
11 might.

12 Sir, the reason I raise this  
13 as an issue is that you'd made  
14 reference earlier in the deposition  
15 to your belief. And I'm not asking  
16 you to redact or change your  
17 testimony at all, not suggesting you  
18 should. But you had made reference  
19 to your belief that Colonel Evanko  
20 had violated, you thought that he had  
21 violated Field Regulation 1-1.17.  
22 And that's why I asked you if you  
23 knew the wording and that's why I  
24 introduced this here to point that,  
25 you know, maybe we'll have a

320

1 difference of opinion over that. The  
2 Court will have to decide it, but you  
3 still think that he violated it;  
4 right?

5 A. Yes, I do.

6 Q. Okay. That's all ---.

7 ATTORNEY GUIDO:

8 Can we clarify that you  
9 accidentally said Colonel  
10 Evanko violated it? I  
11 believe ---.

12 BY ATTORNEY BAILEY:

13 Q. No, no, I'm sorry. Oh, yes,  
14 that can clearly be a major blunder  
15 on my part. As Napoleon once said,  
16 in war a blunder is worse than a  
17 crime. Of course, we're not involved  
18 in a war here, so Colonel Evanko it's  
19 not an allegation that you've  
20 violated this regulation, but you  
believe that Captain Ober has?

22 A. Yes.

23 Q. Okay. How do you think he  
24 violated it? Last question, quite  
25 frankly, that's the last question I

321

1 have for you. How do you think he  
2 violated it?

3 A. I just think the verbiage  
4 tends to indicate a member violated  
5 it, would be consistent with my  
6 recollection of what he told me.

7 Q. Okay. Sir, I can't --- tell  
8 you what, give me one minute to  
9 double-check with my client and I  
10 think I may be done.

11 ATTORNEY BAILEY:

12 Are you going to have  
13 any questions, Syndi?

14 ATTORNEY GUIDO:

15 Probably not.

16 ATTORNEY BAILEY:

17 Sir, my client tells me  
18 that we're clear to go. I'd  
19 like to thank you very much  
20 for your cooperation here  
21 today. I realize being a  
22 witness is uncomfortable and I  
23 appreciate your courtesy.

24 Thank you.

25 A. You're welcome.

322

1

ATTORNEY GUIDO:

2

We don't have any  
3 questions. I was just  
4 clarifying we don't have any  
5 questions.

6

MR. SOLOMON:

7

4 : 08 p.m. The  
8 deposition is now concluded.

9

VIDEOGRAPHER:

10

11

12

It is now 4:10 p.m. and  
the deposition of Commissioner  
Evanko is now concluded.

13

\* \* \* \* \*

14

DEPOSITION CONCLUDED AT 4:10 P.M.

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\* \* \* \* \*

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COMMISSIONER OF DEEDS )

3 C E R T I F I C A T E

4 I, Jennifer P. Billstein, Commissioner of Deeds  
5 for the Commonwealth of Pennsylvania, do hereby  
6 certify:

7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 22 day of April 2002.

23  
24  
25

*Jennifer Billstein*

JENNIFER P. BILLSTEIN  
Commissioner Of Deeds  
Commonwealth of Pennsylvania  
My Commission Expires Jan. 4, 2006

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PSP-501X

COMMONWEALTH OF PENNSYLVANIA

DATE: October 19, 1999

SUBJECT: Specialized Training Opportunity – School of Police Staff and Command

TO: Director, Bureau of Personnel

FROM: Captain Darrell G. Ober

Reference: (a) Special Order 99-102, dated October 7, 1999.

Enclosure: (1) Resume of Qualifications.

1. I request to be considered for the Subject training.

2. The requested information is as follows:

- a. RANK: Captain.
- b. DOB: November 16, 1957.
- c. DOE: July 20, 1981.
- d. DOR: March 3, 1995.

3. Enclosure (1) is a resume of my qualifications.

Exhibit 1

JB 3/27/02

John Payne  
BBB

1237

- \* Probably won't help - didn't get us w/ you  
for several yrs - TIA notified, byt Ober - does not exist  
w/ Cat 98 - took a punt at it - political corruption case  
position to influence ST position - a TPA States  
  
CT States appealed him - I am per yr b/c for the  
turn over tapes + conversations to Ober - somewhat Rep'd  
nothing helped - Ober concerned about going anywhere w/ info -  
~~to another land~~ - are behind closed frontier - w/ stop & search  
whatever occurs - look like States is bad - nothing systemic -  
nobody else but States mentioned - argued 3 1/2 yrs

May 2001 to see you - sort things out

out to me & others

Exhibit-2

JR 3/27/02

FBI Dick Morgan  
FBI 456 7/10  
4/2

Pittsburgh SAC

May 13/20/99

My Page

1-600-555-2202

1. Was advised by two kids with that we (PSA) were the subject of the FBI's investigation into "Selling Dr. Martin" (or an other connection allegation) (see Act 18)

Age Shultz 1½ yrs - Please Date

1200

out of where - what office?

get fed info

Smaller org seem to remember

was a case against a specific Trooper

was B of Dard

???

2. Was I a subject of investigation or any T.L.C.'s

If you were I would have been told - see for example

no - I recently received Smaller about an investigation

- 1 local municipalities - being

not funds w/this

get back to you

J-501X (9-86)

COMMONWEALTH OF PENNSYLVANIA

**DATE:** November 1, 1999

**SUBJECT:** Northwestern University Traffic Institute

**To:** Captain Darrell G. Ober  
Bureau of Technology Services

**FROM:** Lt. Colonel Thomas K. Coury *TKC/mk*  
Deputy Commissioner of Administration

1. Thank you for your interest in attending the Northwestern University Traffic Institute, School of Police Staff and Command, which is being hosted by the New Jersey State Police. Your request was not received in the Bureau of Personnel by the October 22, 1999, deadline. Your request was received on October 28, 1999, and a selection was already made.

2. The Department has selected Lt. Timothy J. Allue and Sgt. Timothy J. McDonald to attend the session.

3. Your desire to improve your managerial skills is indicative of your sound commitment to the established goals and objectives of our Department. Should a similar course be offered in the future, I hope you will again express an interest in attending.

Exhibit J

18 817-

FR 1-1  
3/25/92

1.15 HOLDING OFFICE IN LIQUOR ESTABLISHMENT

Members shall not own, hold office in, or be employed by an organization or establishment licensed by the Pennsylvania Liquor Control Board to dispense alcoholic beverages within the Commonwealth without the approval of the Commissioner nor shall they do so in any other state.

1.16 REQUIRED RESIDENCY

Members shall reside within the limits of the Commonwealth and shall maintain a telephone in such residence. Any change of address or telephone number shall be reported in accordance with AR 4-2.

1.17 REPORTING OF INFORMATION

A. Members shall report to their supervisor all information that comes to their attention concerning organized crime, racketeering, vice conditions or violations of any laws concerning such activities.

B. Members shall promptly report to their supervisor any information which comes to their attention and which tends to indicate that any other member or employe has violated any law, rule, regulation or order.

1.18 INTERFERENCE WITH INVESTIGATIONS ASSIGNED TO OTHER MEMBERS

Members shall not interfere with an investigation assigned to another member for investigation without the consent of the assignee, except by order of their supervisor; nor shall they interfere with the operation of any Bureau, Division, Section or Unit.

1.19 INTERVENTION IN ARREST OR PROSECUTION

Members shall not intervene or interfere in any lawful arrest or prosecution brought by another member of the Department or by any other agency or person.

1.20 INTERFERENCE WITH DISCIPLINE

Members shall not exert, or attempt to exert, any influence on any of the participants in any disciplinary procedure, except as expressly provided by regulation.

Exhibit 4

JB 3/27/02

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF PENNSYLVANIA

\* \* \* \* \*

DARRELL G. OBER, \*

Plaintiff \* Case No.

vs. \* 1 : CV - 01 - 0084

PAUL EVANKO, \*

MARK CAMPBELL, \*

THOMAS COURY, \*

JOSEPH WESTCOTT, \*

HAWTHORNE CONLY, \*

Defendants \*

\* \* \* \* \*

**ORIGINAL**

VIDEOTAPED DEPOSITION OF

LIEUTENANT COLONEL ROBERT HICKES

MARCH 25, 2002

Any reproduction of this transcript  
is prohibited without authorization  
by the certifying agency.

1                   VIDEOTAPED DEPOSITION  
2                   OF  
3     LIEUTENANT COLONEL ROBERT HICKES,  
4     taken on behalf of the Defendants  
5     herein, pursuant to the Rules of  
6     Civil Procedure, taken before me, the  
7     undersigned, Melissa L. Charlton, a  
8     Court Reporter and Notary Public in  
9     and for the Commonwealth of  
10    Pennsylvania, at the offices of  
11    Strategic Development, 2629 Market  
12    Place, Harrisburg, Pennsylvania, on  
13    Monday, March 25, 2002, beginning at  
14    9:25 a.m.

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3

1 A P P E A R A N C E S

2  
3 DON BAILEY, ESQUIRE  
4 4311 North 6th Street  
5 Harrisburg, PA 17110

6 COUNSEL FOR PLAINTIFF

7  
8 SYNDI L. GUIDO, ESQUIRE  
9 Deputy General Counsel  
10 Governor's Office of General Counsel  
11 333 Market Street, 17th Floor  
12 Harrisburg, PA 17101

13 COUNSEL FOR DEFENDANTS

14  
15 BARBARA L. CHRISTIE, ESQUIRE  
16 Chief Counsel  
17 Pennsylvania State Police  
18 1800 Elmerton Avenue  
19 Harrisburg, PA 17110

20 COUNSEL FOR DEFENDANTS,  
21 PENNSYLVANIA STATE POLICE

22  
23  
24  
25

4

1 A P P E R A N C E S

2 (Continued)

3

4 JOANNA N. REYNOLDS, ESQUIRE

5 Assistant Counsel

6 Pennsylvania State Police

7 1800 Elmerton Avenue

8 Harrisburg, PA 17110

9

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1                   I N D E X  
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|  |                           |
|--|---------------------------|
| 3                   WITNESS:                 | LIEUTENANT COLONEL ROBERT |
| 4                   HICKES                   |                           |
| 5  |                           |
| 6                   DISCUSSION AMONG PARTIES | 8 - 14                    |
| 7                   EXAMINATION              |                           |
| 8                   by Attorney Guido        | 14 - 93                   |
| 9                   EXAMINATION              |                           |
| 10                  by Attorney Bailey       | 94 - 164                  |
| 11                  RE-EXAMINATION           |                           |
| 12                  by Attorney Guido        | 164 - 183                 |
| 13                  RE-EXAMINATION           |                           |
| 14                  by Attorney Bailey       | 183 - 194                 |
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EXHIBIT PAGE

2

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PAGE

4

NUMBER      DESCRIPTION      IDENTIFIED

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6

Correspondence

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1                           OBJECTION PAGE

2  
3                           ATTORNEY                                   PAGE  
4       Bailey                   39, 64, 65, 66, 67, 67,  
5                                 68, 69, 72, 168, 171, 173,  
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8       Christie               107, 187, 188, 189  
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1 P R O C E E D I N G S

2 OFF VIDEOTAPE

3 OFF RECORD DISCUSSION

4 ON VIDEOTAPE

5 VIDEOGRAPHER:

6 My name is Michael  
7 Solomon. I am employed by  
8 Sargent's Court Reporting  
9 Services. The date today is  
10 March 25th, 2002. The time is  
11 approximately 9:25 and this  
12 deposition is being taken at  
13 2629 Market Place, Harrisburg,  
14 Pennsylvania.

15 Case number

16 1:CV-01-0084, Darrell G. Ober,  
17 Plaintiff, versus Paul Evanko,  
18 Mark Campbell, Thomas Coury,  
19 Joseph Westcott, Hawthorne  
20 Colony, Defendants. The name  
21 of the witness is Robert  
22 Hickes. Will the attorneys  
23 present state your names and  
24 the parties that you  
25 represent?

1                   ATTORNEY GUIDO:

2                   Syndi Guido,

3                   Defendants.

4                   ATTORNEY CHRISTIE:

5                   Barbara Christie, Chief  
6                   Counsel, Pennsylvania State  
7                   Police.

8                   ATTORNEY REYNOLDS:

9                   Joanna Reynolds,  
10                  Assistant Counsel,  
11                  Pennsylvania State Police,  
12                  Defendant.

13                  ATTORNEY BAILEY:

14                  Don Bailey. I  
15                  represent the Plaintiff,  
16                  Darrell G. Ober, 4311 North  
17                  6th Street, Harrisburg,  
18                  Pennsylvania 17110.  
19                  717-221-9500.

20                  VIDEOGRAPHER:

21                  The Court Reporter may  
22                  now administer the oath.

23                  ATTORNEY GUIDO:

24                  Before we get to that,  
25                  Barbara had some things she

1                   wanted to put on the record.

2                   ATTORNEY CHRISTIE:

3                   Yes. Counsel, I just  
4                   wanted to note for the record  
5                   that Lieutenant Colonel Coury  
6                   is here and present pursuant  
7                   to our continuing offer. And  
8                   I believe I sent you a letter  
9                   to this effect on Friday to  
10                  make Colonel Coury available  
11                  for what you stated on March  
12                  the 12th was another hour of  
13                  deposition. That was the date  
14                  on which Colonel Coury, to my  
15                  recollection, about 3:15 in  
16                  the afternoon. We wished to  
17                  go straight through. You had  
18                  other commitments. You left  
19                  at approximately --- I think  
20                  we adjourned at approximately  
21                  10:05. You indicated you may  
22                  need another hour of  
23                  Lieutenant Colonel Coury and  
24                  at one point had indicated  
25                  that you would be amendable to

1                   completing Colonel Coury's  
2 deposition, to my  
3 recollection, today. Hearing  
4 nothing from you on the letter  
5 on Friday, Colonel Coury is  
6 available here this morning,  
7 along with Colonel Hickes, of  
8 course, and we are willing to  
9 seed one hour of our  
10 deposition of Colonel Hickes  
11 in order to complete Colonel  
12 Coury's deposition.

13                   ATTORNEY BAILEY:

14                   Counsel, I'm used to  
15 self-serving letters, with all  
16 due respect to you, from  
17 defense attorneys and I'm also  
18 used to posturing and I'm also  
19 used to various and sundry  
20 manipulations of the discovery  
21 process for strategic purposes  
22 and I will respond as follows.  
23 I may need Lieutenant Colonel  
24 Coury for more than an hour,  
25 I'm really not sure. And if

12

1           so, I will take the  
2 appropriate amount of time or  
3 I certainly will procure it.

4           I do have a written  
5 response coming to the  
6 communications that you FAXed  
7 on Friday. I am not prepared  
8 to do Lieutenant Colonel Coury  
9 today. We are doing a --- for  
10 some time, as you know, we've  
11 had Lieutenant Colonel Robert  
12 C. Hickes scheduled and I'll  
13 work with you to the extent  
14 that I can, on getting the  
15 continuing deposition of  
16 Colonel Coury scheduled.

17           We've stated our positions.  
18 I'm not prepared to do Mr.  
19 Coury right now and I would  
20 suggest that we move along.

21           ATTORNEY CHRISTIE:

22           Again, we just wanted  
23 to note our continuing offer  
24 for the record based upon your  
25 estimate on Friday that you

1           needed Colonel Coury for  
2           another hour.

3                           ATTORNEY BAILEY:

4                        Yeah. Well, it was  
5                        ---.

6                           ATTORNEY CHRISTIE:

7                        Okay. So here ---  
8                        we've been here. We're  
9                        willing to offer another hour.

10                          ATTORNEY BAILEY:

11                        Counsel, you're wasting  
12                        ---.

13                           ATTORNEY CHRISTIE:

14                        Colonel Hickes, if I  
15                        may finish, is gracious enough  
16                        to defer to Colonel Coury for  
17                        an hour of that deposition.

18                          ATTORNEY BAILEY:

19                        There's no ---.

20                           ATTORNEY CHRISTIE:

21                        We just want the record  
22                        to show that pursuant to what  
23                        we thought was an  
24                        understanding we do have  
25                        Colonel Coury here, but I hear

1                   your response.

2                   ATTORNEY BAILEY:

3                   I think it's wonderful  
4                   that you have Colonel Coury  
5                   here. I always like to see  
6                   him and Colonel Coury, I'm  
7                   happy to see you today. I'm  
8                   wondering now if we could  
9                   begin with Mr. Hickes, if you  
10                  don't mind.

11                  OFF RECORD DISCUSSION

12                  -----  
13                  ROBERT HICKES, HAVING FIRST BEEN DULY  
14                  SWORN, TESTIFIED AS FOLLOWS:

15                  -----  
16                  EXAMINATION

17                  BY ATTORNEY GUIDO:

18                  Q.         Lieutenant Colonel, would you  
19                  state your name for the record and  
20                  your current position with the State  
21                  Police?

22                  A.         My name is Robert Clare  
23                  Hickes. I'm deputy commissioner of  
24                  staff for the Pennsylvania State  
25                  Police.

1 Q. And is your rank lieutenant  
2 colonel?

3 A. Yes, it is.

4 Q. How long have you been  
5 appointed to your current position?

6 A. I was appointed to my current  
7 position in October of 1998, I  
8 believe.

9 Q. Do you remember the exact  
10 date?

11 A. The first or the third, I'm  
12 not positive.

13 Q. The first or the third of  
14 October?

15 A. Correct.

16 Q. And you said that you're a  
17 deputy commissioner. Are all of the  
18 lieutenant colonels in the State  
19 Police deputy commissioners?

20 A. Yes, they are.

21 Q. Or can you be a deputy  
22 commissioner and not be a lieutenant  
23 colonel?

24 A. I don't know. Obviously  
25 things change, but during my tenure,

1 all deputy commissioners have been  
2 lieutenant colonels.

3 Q. I just wondered if the title  
4 goes hand in hand with being the  
5 deputy commissioner because if I'm  
6 not mistaken, you were a deputy  
7 commissioner before.

8 A. Yes, I was.

9 Q. So I'm just trying to get to  
10 the explanation of the gap that one  
11 time you were a lieutenant colonel.

12 A. Okay.

13 Q. And then you were a major; is  
14 that right?

15 A. Yes.

16 Q. And then a lieutenant colonel?

17 A. Yes.

18 Q. Okay. When were you a  
19 lieutenant colonel previously?

20 A. I was lieutenant colonel from  
21 1991. I was in an acting capacity  
22 from January to April and then I was  
23 appointed by Governor Casey to be a  
24 lieutenant colonel --- or deputy  
25 commissioner of operations from April

1       of 1991 until December of 1994. At  
2       the end of the administration, I  
3       requested permission to revert to my  
4       previous rank, which was major, and  
5       then I was acting deputy commissioner  
6       of operations until a new deputy  
7       commissioner was appointed. And I  
8       believe that was February of 1995.

9       Q.       Is that because at the level  
10      of command staff, being a deputy  
11      commissioner, those are pretty much  
12      gubernatorial decisions?

13      A.       Yes, a deputy commissioner is  
14      appointed by the governor. Yes.

15      Q.       So as governor's change, that  
16      wouldn't be any reflection on you, it  
17      would just be that as the governor  
18      changed, they change the deputy  
19      commissioner sometimes?

20      A.       They sometimes do. The reason  
21      for dropping back is more of a  
22      benefits issue. Up to and including  
23      the rank of major within the State  
24      Police is a member of the PSTA  
25      bargaining unit. And retirement from

1       the bargaining unit affects your  
2       benefits, if you retired from the  
3       bargaining unit or not.

4       Q.       I see. When you were a deputy  
5       commissioner previously, I think you  
6       said starting in 1991, was I right?

7       A.       Yes.

8       Q.       You said it was operations?

9       A.       Yes.

10      Q.       What does the deputy  
11       commissioner of operations do?

12      A.       He has a command  
13       responsibility for the field forces  
14       of the Pennsylvania State Police,  
15       which is the troops and area  
16       commanders, as well as the Bureaus of  
17       Liquor Enforcement, Criminal  
18       Investigation, Patrol and Drug Law  
19       Enforcement. Currently, he also has  
20       the Bureau of Emergency and Special  
21       Operations also. I did not when I  
22       was there.

23      Q.       You did not have the Bureau of  
24       Emergency?

25      A.       No.

1 Q. Did you have any involvement  
2 with the State Police Academy in  
3 capacity as the deputy commissioner  
4 of operations?

5 A. No, I did not.

6 Q. Have you ever had any  
7 involvement with the ---  
8 responsibilities that would relate to  
9 the State Police Academy?

10 A. Yes, they have.

11 Q. When was that?

12 A. 1987 to very early in 1988.

13 Q. And what was your role?

14 A. I was the director of Bureau  
15 of Training and Education.

16 Q. The director of the Bureau of  
17 Training and Education, who do they  
18 report to?

19 A. Currently, they report to the  
20 deputy commissioner of  
21 administration.

22 Q. Was that the case back when  
23 you were a deputy commissioner as  
24 well?

25 A. In 1987, I don't believe we

1 had a deputy commissioner of  
2 administration yet. That  
3 organizational change came a little  
4 later and at that time they would  
5 have reported to the chief of staff.

6 Q. When you were a deputy  
7 commissioner the first time, were you  
8 ever a deputy commissioner of  
9 administration?

10 A. No, I was not.

11 Q. And are you the deputy  
12 commissioner of administration now?

13 A. No, I'm the deputy  
14 commissioner of staff.

15 Q. Have you ever been deputy  
16 commissioner of administration?

17 A. No, I have not.

18 Q. Have you ever been deputy  
19 commissioner of operations?

20 A. Yes, I have.

21 Q. And when was that?

22 A. 1991 to 1995.

23 Q. You've got to bear with me.

24 A. I'm okay.

25 Q. It's a complicated history.

1 And since you've been deputy  
2 commissioner since October 1998, have  
3 you always been the deputy  
4 commissioner of staff?

5 A. Yes.

6 Q. What does the deputy  
7 commissioner of staff do?

8 A. My responsibilities include  
9 the Bureaus of Staff Services, Bureau  
10 of Forensic Services, Bureau of  
11 Research and Development, Bureau of  
12 Technology Services and the Bureau of  
13 Records and Identification. The  
14 staff function within the  
15 Pennsylvania State Police are those  
16 entities that support the field and  
17 administrative functions in the  
18 various capacities, whether it's  
19 facilities, fleet management, the  
20 fiscal responsibilities, maintenance  
21 of the records, those kinds of things  
22 with the Department.

23 Q. What does the deputy  
24 commissioner for operations do?

25 A. He's responsible for the field

1 forces of the Pennsylvania State  
2 Police, as well as the Bureaus of  
3 Patrol, Criminal Investigation,  
4 Liquor Enforcement, Drug Law  
5 Enforcement and Emergency and Special  
6 Operations.

7 Q. The Bureau of Professional  
8 Responsibility, where does that fit  
9 into the scheme of things?

10 A. The personnel-related issues  
11 fall under the deputy commissioner of  
12 administration and that would be the  
13 Bureau of Professional  
14 Responsibility, the Bureau of  
15 Training and Education, the Bureau of  
16 Human Resources and the Office of ---  
17 don't quote me on that one, and I'm  
18 not sure whether the Office of Equal  
19 Employment falls under the deputy of  
20 administration or directly under the  
21 commissioner. I'd have to look at a  
22 table of organization.

23 Q. In October of 1998, who was  
24 the deputy commissioner of  
25 administration?

1 A. In October of 1998, Lieutenant  
2 Colonel Coury was the deputy  
3 commissioner of administration.

4 Q. Who is the current deputy  
5 commissioner of administration?

6 A. Lieutenant Hawthorne Conly.

7 Q. How long have you known the  
8 Plaintiff, Capitan Ober?

9 A. I've been aware of Captain  
10 Ober, I believe, since he was a  
11 corporal on the job. He was assigned  
12 to the Bureau of Research and  
13 Development, I believe.

14 Q. If you said the year, I didn't  
15 catch it.

16 A. I have no idea what the year  
17 was. I would have to be speculating  
18 at this point that it would be in the  
19 1988, '89, '90 time frame.

20 Q. Late '80s, early '90s?

21 A. Yeah.

22 Q. Can you describe that  
23 relationship? In other words, is it  
24 a personal relationship, a  
25 professional relationship or some of

1 both?

2 A. It's a professional  
3 relationship.

4 Q. I think you said the Bureau of  
5 Technology Services falls under the  
6 deputy commissioner of staff;  
7 correct?

8 A. Yes, it does.

9 Q. And in that capacity you would  
10 be familiar with the IIMS project?

11 A. Yes, I am.

12 Q. What is the IIMS --- what's it  
13 stand for?

14 A. IIMS is incident information  
15 management system.

16 Q. Can you explain what that is?  
17 Basically just explain the project.

18 A. The Department had a strategic  
19 plan prepared by KPMG to view our  
20 processes and determine, of course,  
21 for solving a lot of business  
22 processes for the Department. IIMS  
23 is the result of that plan, which  
24 should modernize and streamline the  
25 business processes of the Department

1 as it deals with a patrol trooper.  
2 And the IIMS will centralize our  
3 dispatch function, put a records  
4 management system in place, put  
5 mobile data terminals in the patrol  
6 cars for troopers, and in essence  
7 take the aspects of investigation,  
8 evidence gathering --- information  
9 gathering and apply technology to  
10 solve the problem so that troopers  
11 can work more efficiently and  
12 effectively.

13 Q. Can you give me an example of  
14 the kind of program that might be  
15 solved through the IIMS?

16 A. Currently in a paper-based  
17 system, if a trooper investigates an  
18 incident, he may be required to fill  
19 out multiple reports for that. An  
20 example might be a car theft that he  
21 has a vehicle report. He may have a  
22 vehicle recovery report and he held  
23 an incident report. He'll have  
24 evidence. IIMS will allow him to do  
25 the investigation, enter the

1 information one time into the records  
2 management system and then the  
3 records management system will  
4 populate the various reports so that  
5 he doesn't have to have duplicate  
6 entries multiple times to continue to  
7 do his work.

8 Q. You said that this, I guess,  
9 sprung from a strategic plan that was  
10 prepared by KPMG?

11 A. Yes.

12 Q. When was that plan prepared?

13 A. I believe that they were on  
14 board with the Department in 1995.  
15 I'm not certain when they finished  
16 their strategic plan.

17 Q. Do you know what prompted  
18 having the strategic plan done?

19 A. Yeah. I think that the  
20 evaluation of where we were as a  
21 department and how we used technology  
22 caused both Commissioner Evanko and  
23 previous Commissioner Waulp  
24 (phonetic) to believe that there were  
25 more efficient and effective ways to

1 do that.

2 Q. Had this analysis that was  
3 done of the Department's processes,  
4 et cetera, had that started under  
5 Commissioner Waulp or did that start  
6 new with the current administration?

7 A. I believe Commissioner Waulp  
8 started the --- at least had gone out  
9 for contracting with KPMG and the  
10 vendor was selected, but he left  
11 shortly after the vendor was  
12 selected. I don't know whether they  
13 had done any work or not.

14 Q. Now, this IIMS project, is it  
15 part of a larger project?

16 A. IIMS is the larger project.  
17 It's got a number of subsets.

18 Q. Can you identify some of those  
19 subsets for me?

20 A. A subset would be the mobile  
21 data computing that puts terminals in  
22 the patrol cars for the officers to  
23 use. A subset would be the records  
24 management system. A subset would be  
25 the centralization of the dispatch

1 function. And with that would come  
2 computer aided dispatch and automatic  
3 vehicle locator and the technologies  
4 that go with consolidated dispatch.

5 Q. So those are all basically  
6 smaller projects within a larger  
7 project ---

8 A. Called IIMS.

9 Q. --- called IIMS.

10 A. Yes.

11 Q. How long --- I mean, the IIMS  
12 project, is that still ongoing or is  
13 it complete?

14 A. It's still ongoing.

15 Q. Do you have an estimated time  
16 that it will be actually done, the  
17 whole thing?

18 A. The phase II contracting is  
19 underway right now. Part of the  
20 phase II contracting is to have the  
21 vendor provide their reasonable  
22 effort for when this would be  
23 completely finished. At the outside,  
24 I would say that it would be about 42  
25 months, but it should be shorter than

1 that.

2 Q. For phase II?

3 A. To be completely finished.

4 Q. And how many phases will there  
5 be totally to the project?

6 A. Two.

7 Q. Two phases?

8 A. Yes.

9 Q. What was phase I?

10 A. Phase I was the detailed  
11 design.

12 Q. Can you elaborate for me? I'm  
13 sort of technologically impaired.

14 A. The detailed design, Lockheed  
15 Martin was the successful vendor on  
16 the IIMS contract. Phase I provided  
17 that they would --- they and their  
18 consortium would do a detailed design  
19 of how the various components would  
20 be designed and then integrated. And  
21 that's it.

22 Q. The various components, are  
23 you talking about those different ---  
24 the smaller projects we're talking  
25 about?

1 A. Yes.

2 Q. And so for the whole project  
3 to be completed through phase II will  
4 be at least three or four more years  
5 from now?

6 A. Possibly three or four more  
7 years.

8 Q. During these two phases of the  
9 project, have there been a lot of  
10 different members of the State Police  
11 organization that have rotated in and  
12 out of assisting with the project?

13 A. There has been some rotation  
14 in and out of the project, yes.

15 Q. And as the project is being  
16 completed, will that rotation in and  
17 out continue to occur?

18 A. It's possible that there could  
19 be additional rotations in and out.

20 Q. At one point I believe Captain  
21 Ober, since it's part of this  
22 lawsuit, Captain Ober was part of the  
23 IIMS project. Can you explain what  
24 his role was in the project?

25 A. His role was a team leader for

1 the request for qualified quotation  
2 for the vendors that were under  
3 evaluation to be the system's  
4 integrator.

5 Q. Request for qualified R ---?

6 A. RFQC contract or request for  
7 qualified contract.

8 Q. Okay. Can you explain what  
9 that process is?

10 A. That's a rather in-depth  
11 evaluation of the corporate bidders  
12 for the contract to determine which  
13 bidder submits the most comprehensive  
14 beneficial package for the  
15 Commonwealth.

16 Q. So the end result of that is  
17 that, that portion of the program,  
18 would be that a vendor would be  
19 selected to be the system's  
20 integrator?

21 A. Correct.

22 Q. And that, I think you said,  
23 was Lockheed Martin?

24 A. Correct.

25 Q. And Captain Ober's assignment

1 to the IIMS project was solely to  
2 accomplish that phase, selection of  
3 system integration; is that correct?

4 A. Correct.

5 Q. Do you know how he was chosen  
6 for that role?

7 A. The commissioner chose him for  
8 that role.

9 Q. Did you have any input in that  
10 at all?

11 A. The commissioner asked whether  
12 I was agreeable to Captain Ober being  
13 the team leader on the RFQ. I had  
14 right of denial, I suppose.

15 Q. Okay. Now, in his lawsuit  
16 Captain Ober has indicated that this  
17 is a \$100 million project that has  
18 suffered greatly and cost the  
19 taxpayers a lot more money because he  
20 was transferred into another  
21 position. That particular portion,  
22 the system's integrator portion of  
23 the project, that part wasn't a \$100  
24 million project; was it?

25 A. The overall project is going

1 to cost over \$100 million. Lockheed  
2 Martin and the systems integrator  
3 have the responsibility for bringing  
4 that all together. So the nature of  
5 the procurement in this particular  
6 instance isn't that the Commonwealth  
7 goes out and buys the various parts  
8 and says to Lockheed Martin, here it  
9 is, put it together, but that we  
10 contract with Lockheed Martin, who is  
11 then the prime contractor to assemble  
12 the various parts that we've  
13 identified need to be in this,  
14 purchase them and assemble it. So in  
15 a large way, Lockheed Martin is  
16 involved in over \$100 million because  
17 they become the prime.

18 Q. But Captain Ober's team put  
19 together the phase I design contract  
20 and that totaled \$8.8 million; is  
21 that right?

22 A. That's correct.

23 Q. Did Captain Ober fulfill his  
24 assignment with the IIMS project?

25 A. Yes, he did.

1 Q. And, in fact, he voted on the  
2 final selection of Lockheed Martin;  
3 is that right?

4 A. Yes, I believe he did.

5 Q. What role does Major Waugh  
6 play in the IIMS project? His name  
7 has come up a bunch, and so I thought  
8 you'd be able to explain that for me.

9 A. Major Waugh is the Director of  
10 the Bureau of Technology Services.  
11 And this project, because it's a  
12 technology project is being  
13 administered and led out of the  
14 Bureau of Technology Services. So he  
15 had oversight responsibility for the  
16 project generally and for members of  
17 the project team specifically.

18 Q. So the project team leaders,  
19 do they report to Major Waugh?

20 A. Yes, they would.

21 Q. Directly?

22 A. Yes.

23 Q. And then Major Waugh would  
24 report to you?

25 A. Yes.

1 Q. Ron Wilt, what role does he  
2 play in the IIMS project?

3 A. He's currently the project  
4 manager for IIMS.

5 Q. What does the project manager  
6 do?

7 A. Have you ever been a project  
8 --- I'm sorry.

9 Q. No, I haven't. That's why I'm  
10 asking you.

11 A. The project manager has  
12 responsibilities for all aspects of  
13 the project, from scheduling to risk  
14 mitigation to evaluating what the  
15 Commonwealth wants and determining  
16 that we, A, get what we want, and B,  
17 get what we pay for. He had  
18 responsibilities, liaison  
19 responsibilities with the various  
20 vendors. He's the point of contact  
21 for vendors, so he's literally the  
22 hub of the wheel on a project.

23 Q. Is he a civilian or a member  
24 of the State Police?

25 A. He's a civilian employee with

1 the State Police.

2 Q. Lieutenant Brian Acken, is he  
3 involved in the IIMS project?

4 A. Yes, he is.

5 Q. And what role does he play?

6 A. I'm not certain exactly what  
7 Lieutenant Acken's title is. His  
8 responsibilities are to ensure that  
9 the end product with IIMS satisfies  
10 the needs of the enlisted members of  
11 the Pennsylvania State Police.

12 Q. Do you know when Lieutenant  
13 Acken was brought into tech services?

14 A. I don't recall, no.

15 Q. Do you know whether that was  
16 before or after Captain Ober was  
17 there?

18 A. I believe it would have been  
19 after, but again, I'm not certain of  
20 the dates.

21 Q. And Lieutenant Acken, he has a  
22 strong technological background; is  
23 that right?

24 A. He had been involved in the  
25 computer crimes unit before and so he

1 does know technology pretty well.  
2 Q. Are you aware of any amounts  
3 of money that --- in other words,  
4 Captain Ober here has said that it  
5 costs the taxpayers lots and lots of  
6 money because --- and delay in  
7 expense because he was taken off the  
8 project. Are you aware of any  
9 expense to the taxpayers, et cetera,  
10 that has come about because Captain  
11 Ober has not been able to be on the  
12 project?

13 A. I'm not aware of any direct  
14 expense, no.

15 Q. And has the project continued  
16 to move forward successfully?

17 A. Yes.

18 Q. And you're satisfied with the  
19 direction in which it's going and the  
20 work that's being complete, et  
21 cetera?

22 A. Yes, I am.

23 Q. Now, as far as the --- I want  
24 to talk to you about --- Captain Ober  
25 has told us in the past that he had

1 applied for a position as the  
2 legislative liaison when the former  
3 legislative liaison left. I'm trying  
4 to remember that gentleman's name.  
5 Captain Morris or something like  
6 that.

7 ATTORNEY BAILEY:

8 Colonel Hickes, before  
9 you respond, Syndi, perhaps we  
10 should agree that we employed  
11 stipulations in the past as to  
12 objections being deferred,  
13 except as to the form of the  
14 question, until the time of  
15 trial. Do you agree with that  
16 stipulation?

17 ATTORNEY GUIDO:

18 Yes.

19 ATTORNEY BAILEY:

20 Okay. From time to  
21 time, Colonel, I may object,  
22 unless I state additional  
23 information on the record, I  
24 may say to you, objection, you  
25 may continue. So just give

1           --- and by the way, are you  
2           representing him at this  
3           deposition or is he here as a  
4           freelancer?

5           ATTORNEY CHRISTIE:

6           He's being represented  
7           as far as ---.

8           ATTORNEY GUIDO:

9           I mean, we represent  
10          the whole command staff.

11          ATTORNEY BAILEY:

12          Well, I assume ---

13          ATTORNEY GUIDO:

14          I'm letting him go.

15          ATTORNEY BAILEY:

16          --- you've consulted  
17          with him and talked with him  
18          and that you represent him as  
19          a witness here today. And  
20          that's all right. I just note  
21          an objection to the last  
22          question, and you may respond,  
23          sir.

24          ATTORNEY GUIDO:

25          Actually, since then,

1           Captain Brown was kind enough  
2           to give me the name I was  
3           looking for, which was Major  
4           Richard Morris.

5         A.       And - - - .

6         BY ATTORNEY GUIDO:

7         Q.       Do you remember when he was  
8           legislative liaison?

9         A.       I remember when he was  
10          legislative liaison. I think he's  
11          been retired two or three years.

12         Q.       And did you know that Captain  
13          Ober applied for the position as  
14          legislative liaison when Major Morris  
15          left?

16         A.       Yes, I did.

17         Q.       Can you tell me what you know  
18          about Captain Ober's application for  
19          that position?

20         A.       I believe at the time he was  
21          still within the Bureau of Technology  
22          Services and he submitted his  
23          application through channels to the  
24          commissioner.

25         Q.       Would you have been one of

1 those channels?

2 A. Yes. It would have gone, I  
3 believe, to Major Waugh and then to  
4 me.

5 Q. From Major Waugh to you for  
6 approval or disapproval or what would  
7 your role be?

8 A. The legislative liaison within  
9 the Department works --- I believe it  
10 reports to the commissioner. So my  
11 role would have been to pass it on.  
12 I would ---.

13 Q. Do you recommend one way or  
14 the other to the commissioner whether  
15 or not Captain Ober would be good for  
16 that spot?

17 A. I don't recall whether I put  
18 an endorsement on it or not.

19 Q. When you say put an  
20 endorsement, what does that mean?

21 A. Well, within the State Police,  
22 correspondence, process and  
23 endorsement. On correspondence is  
24 your opinion of it and/or just a note  
25 of transmittal. I don't know whether

1 I endorsed that one or not.

2 Q. But you would have been able  
3 to endorse it, if you wanted to?

4 A. Sure.

5 Q. That would be your choice?

6 A. I could have if I wanted to.

7 Q. Now, we know that it's already  
8 been established that Captain Ober  
9 told you about the FBI's  
10 investigation into possible  
11 corruption of the State Police  
12 Academy on October 5, 1998. Do you  
13 recall that?

14 A. I don't recall that it was  
15 into the State Police Academy. My  
16 recollection was that it was into the  
17 ability to have --- to get hired by  
18 the State Police and circumvent the  
19 hiring process.

20 Q. How do you get hired by the  
21 State Police?

22 A. My best --- and I'm going to  
23 tell you my best notion of this. And  
24 if I'm wrong in any way, it's because  
25 I'm not from the Bureau of Human

1 Resources. But one applies to the  
2 Pennsylvania State Police, if they're  
3 between the requisite age, they're a  
4 resident of Pennsylvania and they  
5 have the requisite education, then  
6 there's an examination that's given  
7 that places candidates on the list of  
8 eligible. Once they're placed on the  
9 list of eligibles, they're required  
10 to subsequently undergo polygraph  
11 examination, a background  
12 investigation. I believe there's a  
13 psychiatric investigation, but don't  
14 quote me on that one. And they  
15 continue through this process until  
16 the list gets dwindled down and then  
17 the Bureau of Human Resources simply  
18 goes down the list and picks the top  
19 candidates and invites them to the  
20 State Police Academy to begin  
21 training. I believe that's the way  
22 it is currently.

23 Q. And your understanding of the  
24 FBI's investigation was that it was  
25 looking into what part of that

1 process?

2 A. My understanding was that they  
3 had information that one could  
4 circumvent that process and for an  
5 amount of money, if you --- and at  
6 the time, I believe, when they gave  
7 the exam they were banding it. In  
8 other words, there was a band A of  
9 the most eligible people and then a  
10 band B of the next group of  
11 eligibles. I think initially that if  
12 you paid money you could move from  
13 band B to band A and if at anywhere  
14 through the process you failed one of  
15 these, either the physical testing or  
16 the polygraph examination, money  
17 could be paid to get that made to  
18 look like you had passed.

19 Q. Who figures out the banding?

20 A. It's all done in the Bureau of  
21 Human Resources. Actually, it was  
22 the Bureau of Personnel at the time,  
23 test contractors.

24 Q. Who's in charge of the Bureau  
25 of Human Resources?

1 A. Currently it's Linda Bonney.

2 Q. Is she a civilian employee?

3 A. Yes, she is.

4 Q. Do you know if she was in  
5 charge of it back in October of '98?

6 A. I'm not certain. Mr. Wayne  
7 Dowling retired at some point in time  
8 and I'm not sure who and when it ---.

9 Q. It rings a bell for you,  
10 though. And he was a civilian  
11 employee also?

12 A. Yes, he was.

13 Q. Okay. The director of  
14 personnel?

15 A. Correct.

16 Q. Who would he report to?

17 A. He would have reported earlier  
18 in his tenure to the chief of staff,  
19 and then after the reorganization, to  
20 the deputy commissioner of  
21 administration.

22 Q. Who was the chief of staff?

23 A. Well, that predates all of  
24 this and that was Colonel Nick  
25 Dellarciiprete. And then upon his

1 retirement, I believe Frank Lynch was  
2 chief of staff for a while.

3 Q. But you said that there wasn't  
4 a chief of staff at the time that  
5 these events occurred in October of  
6 '98?

7 A. During Colonel Sharp's  
8 administration, he did a  
9 reorganization of the Department  
10 which created the deputy commissioner  
11 of administration and redistributed  
12 roles and responsibilities.

13 Q. Would that have gone back as  
14 far, let's back up to say, 1994 in  
15 the Waulp administration, was --- it  
16 had already been changed by then?

17 A. It had been changed by then,  
18 yes.

19 Q. And in the Waulp  
20 administration, who would be director  
21 of personnel have reported to?

22 A. The deputy commissioner of  
23 administration.

24 Q. Do you know what role, if any,  
25 the deputy commissioner of

1 administration plays in that process  
2 that you've just described?

3 A. I don't know.

4 Q. Do you know what role, if any,  
5 the deputy commissioner of operations  
6 would play in that process?

7 A. I don't know.

8 Q. How about does the governor's  
9 office have anything to do with that  
10 process?

11 A. Not that I know of. I don't  
12 know.

13 Q. And do you know whether or not  
14 the commissioner ever gets involved  
15 in that?

16 A. I don't know.

17 Q. When Captain Ober talked to  
18 you about the FBI's investigation on  
19 October 5, 1998 you had just started  
20 as deputy commissioner of staff; is  
21 that right?

22 A. Yes, I had.

23 Q. Been there a day or two?

24 A. What day of the week is the  
25 fifth?

1 Q. I believe it's a Monday?

2 A. It would be my first day. I  
3 don't have the dates, but I think I  
4 was notified of my appointment on a  
5 Friday.

6 Q. Do you recall Captain Ober  
7 talking to you about the FB --- do  
8 you recall when he first told you  
9 about the FBI investigation?

10 A. I recall him telling me about  
11 it, yes.

12 Q. Can you tell us about that  
13 conversation that you had with him?

14 A. I'm not certain exactly where  
15 it took place. It was in department  
16 headquarters. It may have been a  
17 corridor conversation.

18 Q. But it was face to face?

19 A. Yes, it was face to face.  
20 Captain Ober approached me about an  
21 issue that he had had concerning the  
22 FBI contacting him relative to this  
23 information that one could buy one's  
24 way onto the Pennsylvania State  
25 Police. He indicated to me that the

1       FBI had contacted him in confidence  
2 and asked him not to reveal this  
3 information to anyone else, that this  
4 was a political corruption  
5 investigation that they had been  
6 investigation previously and that  
7 this information had been a segment  
8 of that that they had kind of allowed  
9 to lie dormant for a while and then  
10 they were tying up loose ends, if you  
11 will and they wanted to continue this  
12 investigation and that they had  
13 needed information concerning the  
14 process of how one does get hired  
15 onto the Pennsylvania State Police  
16 and that they did not know,  
17 obviously, who might be involved in  
18 this. I believe the information that  
19 the term colonel had been used and  
20 that there were suspicions that it  
21 may go to the Governor's office.

22 Q.       Now, the process, they needed  
23 information about the process of  
24 getting into the academy and that was  
25 something that you weren't really

1      familiar with; is that right?

2      A.        This has changed over the  
3           years, how one gets accepted onto the  
4           Pennsylvania State Police.

5      Q.        At that time, did he mention  
6           to you anything about Trooper  
7           Stanton?

8      A.        I don't believe so, no.

9      Q.        I think you said --- backing  
10       up, you mentioned that he said the  
11       FBI said not to tell anyone else  
12       about it. Did you have any  
13       discussion with him about why he  
14       wasn't telling his major, the head of  
15       the Bureau of Professional  
16       Responsibilities?

17     A.        He indicated to me that he was  
18       in a quandary about what to do and  
19       who to tell on this, that it was  
20       information that he felt was serious  
21       enough that he should communicate it  
22       to somebody but really wasn't sure,  
23       based on the fact that the term  
24       colonel had been used, wasn't sure  
25       who he would be able to talk to. And

1       he decided that I was the person he  
2       should tell, because I had not been a  
3       colonel and, other than in the  
4       previous administration, hadn't been  
5       there in a number of years, and  
6       certainly wasn't in a position to  
7       influence the hiring process.

8       Q.       What did he tell you about  
9       what the FBI said about whether he  
10      could tell anybody else within the  
11      Department?

12      A.       He said that the FBI had asked  
13      him for the strictest confidence and  
14      that he had responded to the FBI that  
15      he needed to tell someone and that  
16      they had indicated that they would  
17      let that up to him to do, but that it  
18      was a very sensitive matter and that  
19      he was to tell no one about this.

20      Q.       And your response to him was?

21      A.       I asked him whether they were  
22      asking us to perform any  
23      investigative tasks, or whether they  
24      were just seeking background  
25      information. He indicated that it

1 was background information only. We  
2 discussed very briefly the remoteness  
3 of this probably being true, that it  
4 was probably not true because of the  
5 number of individuals that would have  
6 to be involved in it. Then we kind  
7 of reasoned that technically there  
8 would only have to be like five or  
9 six, if they were the right  
10 individuals.

11 Q. Who were the five or six?

12 ATTORNEY BAILEY:

13 Please, he hadn't  
14 finished. I'd like to hear  
15 the end of his question.

16 BY ATTORNEY GUIDO:

17 Q. Can you clarify for me who the  
18 five or six are and when you're  
19 finished we'll go on?

20 ATTORNEY GUIDO:

21 Your objection is  
22 noted. He can finished his  
23 question, after he's answered  
24 mine.

25 ATTORNEY BAILEY:

1                   No, no, no, look, you  
2                   interrupted. He was answering  
3                   the question and, again, that  
4                   is highly improper. I want to  
5                   hear the end of that ---  
6                   that's an extremely ---.

7                   ATTORNEY GUIDO:

8                   No, it isn't. It's  
9                   noted, Mr. Bailey.

10                  ATTORNEY BAILEY:

11                  Noted my behind, ma'am.  
12                  No, it's not noted and I'm not  
13                  going to stop objecting. He  
14                  was answering a question, a  
15                  very, very important one. He  
16                  was in the middle of that  
17                  question. You interrupted him  
18                  with another question. Now, I  
19                  am respectfully requesting  
20                  that you allow him to answer  
21                  that question. In fact, I'd  
22                  like to have it read back.  
23                  That's an extremely material  
24                  question in this lawsuit. Are  
25                  you going to let it be read

1 back?

2 ATTORNEY GUIDO:

3 No, not until he's  
4 answered my question who were  
5 the five or six?

6 ATTORNEY BAILEY:

7 Counsel, let me tell  
8 you --- let me put something  
9 on the record right now.

10 ATTORNEY GUIDO:

11 Go ahead.

12 ATTORNEY BAILEY:

13 You interrupt this  
14 witness one more time and  
15 prevent him from answering a  
16 material question, I am taking  
17 my client and we are leaving  
18 and we will go to the Judge.

19 ATTORNEY GUIDO:

20 That's fine.

21 ATTORNEY BAILEY:

22 Now, you are not  
23 allowed to interrupt a  
24 response to a question and  
25 that was an extremely

1           important one. I want him to  
2           be allowed to finish. I'm  
3           going to let you get away with  
4           it this time. I respectfully  
5           request --- I am asking that  
6           you not do that again, you'll  
7           disrupt this deposition and  
8           you're going to destroy the  
9           flow of information. It sends  
10          messages. It's wrong.

11           ATTORNEY GUIDO:

12           If you chose to leave,  
13          it's up to you.

14           ATTORNEY BAILEY:

15           He was answering ---  
16          no, you're not allowed.

17           ATTORNEY GUIDO:

18           It's up to you, if you  
19          leave.

20           ATTORNEY BAILEY:

21           No, ma'am, I'm not  
22          allowed to do it either.

23           ATTORNEY GUIDO:

24           It's up to you if you  
25          chose to leave.

1                   ATTORNEY BAILEY:

2                   I am telling you, I am  
3                   going to leave this deposition  
4                   if you do that again.

5                   ATTORNEY GUIDO:

6                   Well, that's your  
7                   choice.

8                   BY ATTORNEY GUIDO:

9                   Q.         Lieutenant Colonel, I've kind  
10                  of totally lost track now of what you  
11                  were responding to, but I believe you  
12                  were explaining that you and Captain  
13                  Ober had first thought that it was a  
14                  bunch of people that would have to be  
15                  involved and then narrowed it down to  
16                  if they were the right people, maybe  
17                  five or six people, and then perhaps  
18                  you were going to say something else,  
19                  I don't know. But could you first  
20                  tell me like the five or six people  
21                  that you narrowed it down to and then  
22                  if there was something else you  
23                  wanted to add, feel free to do that.

24                  A.         Technically, in my opinion at  
25                  the time, personnel --- the Bureau of

1 Personnel Cadet Processing Unit. And  
2 that would have been Rose Pollack and  
3 Julie Farthing could be individuals  
4 who --- I don't know whether anyone  
5 looks at the list after they say  
6 these or the cadets that are on it  
7 and these are the people that should  
8 start the academy and these are the  
9 people we process.

10 I'm not sure what the  
11 oversight is. So obviously, those  
12 two people in the cadet processing  
13 unit, if there is oversight, then the  
14 Director of the Bureau of Personnel  
15 clearly could be someone that could  
16 be involved. And then obviously  
17 someone ranked higher than them with  
18 influence to have them manipulate  
19 something could be someone that could  
20 do this. That could be the  
21 commissioner or any of the deputies  
22 or the Governor's office.

23 Q. And was there something else  
24 that you wanted to add?

25 A. I recall that I, and this is

1 my recollection, I recall that I was  
2 answering --- you were asking what  
3 Captain Ober and I had discussed and  
4 why he might not have gone to  
5 Lieutenant Colonel Conly, actually  
6 Major Conly at the time. I don't  
7 know, but he did ask me, what do I  
8 do? I mean, I've been sworn to  
9 confidentiality. I have a boss. I'm  
10 telling you. This is supposed to be  
11 a secret; what do I do? And at that  
12 I responded to Captain Ober, I hereby  
13 direct you, I order you, not to  
14 divulge this information to anyone  
15 and made that --- placed that in the  
16 form of an order.

17 ATTORNEY BAILEY:

18 Colonel, I didn't catch  
19 the tail end of your response,  
20 if you would be kind enough to  
21 repeat it.

22 A. As I said, Captain Ober was  
23 concerned about his bosses and he had  
24 come to me, which was outside of his  
25 chain of command. And I told him

1       that the FBI had requested  
2       confidentiality, this was their  
3       investigation and that I gave him a  
4       direct order not to divulge the  
5       information to anyone until they had  
6       completed their investigation.

7                                  ATTORNEY BAILEY:

8                                  Thank you, sir.

9                                  BY ATTORNEY GUIDO:

10       Q.       When you were listing the five  
11       or six people, the people that you  
12       thought might be able to be involved  
13       in the changing, the banding, et  
14       cetera, would the Director of the  
15       Bureau of Professional Responsibility  
16       have any involvement in that process?

17       A.       Probably not.

18       Q.       And the Director of the Bureau  
19       of Professional Responsibility was  
20       then Major Conly?

21       A.       He had just gotten promoted,  
22       yes.

23       Q.       And he would have been the  
24       person that was the immediate  
25       supervisor of Captain Ober?

1 A. That's correct.

2 Q. Now, you mentioned in your  
3 response that you ordered Captain  
4 Ober not to tell anybody else about  
5 it. And then you mentioned that it  
6 was because he had said that he was  
7 sworn to you confidentiality. Was it  
8 your understanding from Captain Ober  
9 that the FBI had been explicit in  
10 requesting that confidentiality?

11 A. Yes, it was.

12 Q. And that the FBI had been  
13 explicit in asking him not to  
14 disclose this information to other  
15 people?

16 A. Yes.

17 Q. Did you ever personally speak  
18 with anyone from the FBI about the  
19 investigation?

20 A. No, I did not.

21 Q. Did you ever personally speak  
22 with anyone from the FBI about the  
23 need to keep this confidential from  
24 other people within the State Police?

25 A. No, I did not.

1 Q. So is the bottom line  
2 basically that you made your decision  
3 about what to order Captain Ober to  
4 do based on the facts as he  
5 represented them to you?

6 A. That's correct.

7 Q. And you didn't have any  
8 personal knowledge of whether the  
9 facts that he told you were true or  
10 weren't true; is that right?

11 A. That's correct.

12 ATTORNEY GUIDO:

13 I'm going to ask  
14 Captain Brown to be so kind as  
15 to --- one for the witness and  
16 there's one for Mr. Bailey.  
17 If you could just have the  
18 Court Reporter --- hand that  
19 to the Court Reporter,  
20 Colonel, and let her mark it  
21 as Exhibit One. Colonel, just  
22 let her mark it and then you  
23 can have it back.

24 (Deposition Exhibit One  
25 marked for

1 identification.)

2 BY ATTORNEY GUIDO:

3 Q. Okay. Exhibit One, do you  
4 recognize that document?

5 A. Yes, I do.

6 Q. And can you describe it for  
7 me, identify it?

8 A. It's correspondence from me to  
9 the commissioner providing him facts  
10 as I knew then to be, based upon his  
11 request for this information, after  
12 we disclosed to him that the FBI had  
13 conducted the investigation.

14 Q. And in your memo --- well,  
15 just a moment ago I had asked you and  
16 you had said that you didn't have any  
17 personal knowledge, that this was all  
18 based on what Captain Ober told you  
19 in October 5. Does your memo of May  
20 18th, 1999 document what Captain Ober  
21 told you?

22 WITNESS REVIEWS DOCUMENT

23 A. Yes, it does.

24 BY ATTORNEY GUIDO:

25 Q. Now, did --- I think you said

1 on that first meeting that Captain  
2 Ober did not mention anything about  
3 Trooper Stanton being involved?

4 A. I don't believe that he did at  
5 the time, no.

6 Q. Do you know when he told you  
7 about that?

8 A. Our meetings weren't formal.  
9 In fact, if I had occasion to talk to  
10 the captain, I may inquire, you know,  
11 has he heard anything. At some  
12 point, he raised the name Stanton as  
13 being someone that had facilitated a  
14 meeting or was involved in a meeting,  
15 but I don't know when it was.

16 Q. Did Captain Ober ever tell you  
17 that Trooper Stanton had indicated  
18 during the course of this  
19 investigation that he knew people  
20 that had bought their way into the  
21 academy?

22 A. Repeat the question, again.

23 Q. Did Captain Ober ever tell you  
24 that during the course of the FBI  
25 investigation --- was he giving you

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1 updates about the FBI investigation  
2 at all?

3 A. Yes, if something's  
4 significant, yes he would.

5 Q. So as part of those updates,  
6 what I was wanting to know is whether  
7 Captain Ober ever told you that  
8 Stanton had said, during this FBI  
9 investigation, that he actually knew  
10 people who had bought their way into  
11 the State Police academy?

12 A. I believe he had.

13 | ATTORNEY BAILEY:

17 A . I believe he did say that .

18 | BY ATTORNEY GUIDO:

19 Q. And did Captain --- excuse me.

20 A. No. Go ahead.

21 Q. Did Captain Ober ever tell you  
22 that the FBI gave him the names of  
23 two people that had supposedly bought  
24 their way into the academy and him go  
25 check to see if they really were in

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1 | the academy?

2 A. I'm not certain on that.

3 Q. Do you know --- did Captain  
4 Ober ever tell you any of his efforts  
5 to find out more about the process of  
6 getting into the academy?

7 A. No, not that I recall.

8 Q. Did he ever give you any  
9 updates about what he may have told  
10 the FBI about the process of getting  
11 into the academy?

12 A. Not that I recall.

13 Q. Did Captain Ober ever mention  
14 to you that when the FBI spoke with  
15 him that they left it completely up  
16 to him who to tell the State Police  
17 about this information?

18 A. My recollection - - - .

19 ATTORNEY BAILEY:

20                              Objection to the form  
21                              of the question. Sir, you may  
22                              respond.

23 A. My recollection of the  
24 conversation is that he indicated  
25 that he needed to tell someone else

1 and they said they would leave it to  
2 him, if that answers your question.

3 BY ATTORNEY GUIDO:

4 Q. Well, did he ever tell you  
5 that they really didn't care who he  
6 told within the State Police?

7 A. No.

8 ATTORNEY BAILEY:

9 Let me note the witness  
10 has a tendency to answer  
11 questions very, very quickly,  
12 which is fine, no problem,  
13 sir. But I would like to note  
14 an objection to the previous  
15 question.

16 BY ATTORNEY GUIDO:

17 Q. Did you know that it was  
18 Captain Ober who suggested to the FBI  
19 that a lieutenant colonel would have  
20 to be involved in order to have  
21 something like that occur?

22 A. No.

23 Q. We've already established, in  
24 a prior deposition with the FBI, that  
25 it was on October 13th, 1998 that a

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1 wire tap --- first time the word  
2 colonel was used on a wire tap and  
3 that that was actually lieutenant  
4 colonel, rather than colonel. Did  
5 you know that the FB ---?

6 ATTORNEY BAILEY:

7 Let me place an  
8 objection to the  
9 characterization of testimony  
10 and let me place an objection  
11 on the record to the question.

12 BY ATTORNEY GUIDO:

13 Q. Did you know, with that in  
14 mind, did you know that the FBI agent  
15 had not even picked up on the use of  
16 the word lieutenant colonel on that  
17 tape, until it was pointed out to  
18 them by Captain Ober?

19 ATTORNEY BAILEY:

20 Objection to the  
21 characterization of testimony.  
22 Objection to the lack of  
23 foundation. Objection to the  
24 form of the question. You may  
25 respond, sir.

1 A. No.

2 BY ATTORNEY GUIDO:

3 Q. Did you ever know, through the  
4 FBI or through Captain Ober, that  
5 prior to speaking to Captain Ober  
6 about the FBI investigation, the FBI  
7 agents had already talked to people  
8 within the organized crime section  
9 about the investigation?

10 A. No.

11 Q. Did you know that they had  
12 already talked to someone out in the  
13 western internal affairs office about  
14 the investigation?

15 A. No.

16 Q. Again, you were operating  
17 under the premise that the FBI had  
18 specifically asked Captain Ober for  
19 no one else in the State Police to  
20 know about this; is that correct?

21 A. Correct.

22 Q. And if, in fact, that was not  
23 the case, would your advice to  
24 Captain Ober have been the same?

25 ATTORNEY BAILEY:

1                           Objection. You may  
2                           respond, sir.

3                           A. You need to --- if what was  
4                           not the case.

5                           BY ATTORNEY GUIDO:

6                           Q. In other words, if you knew,  
7                           at about the time that Captain Ober  
8                           came to you, if you had known that  
9                           the FBI agent had already gone to the  
10                          organized crime unit and said, we  
11                          have this investigation into people  
12                          that might be able to buy their way  
13                          into the academy, can you imagine how  
14                          something like this happened and they  
15                          had a whole discussion about it. And  
16                          if the people had said, well, you  
17                          better go tell, you know, the Bureau  
18                          of Professional Responsibility, they  
19                          can help you out, would your advice  
20                          have still been the same to Captain  
21                          Ober about not telling anybody else,  
22                          not telling his major?

23                           ATTORNEY BAILEY:

24                           Objection to the form  
25                           of the question. You may

1                   respond.

2         A.         Confidentiality is prefaced on  
3                   the fewest number of people knowing  
4                   about it as possible. If the  
5                   information were already fairly  
6                   widely disseminated or at least  
7                   disseminated by them to a wider  
8                   audience, then there would have been  
9                   less need for confidentiality.

10         BY ATTORNEY GUIDO:

11         Q.         And that might have changed  
12                   what your decision process was?

13         A.         It might have, yes.

14         Q.         Okay. So you were basing your  
15                   decision on what Captain Ober told  
16                   you?

17         A.         Correct.

18         Q.         Now, did you know that Captain  
19                   Ober met with the FBI in Indiana,  
20                   Pennsylvania at a Holiday Inn to  
21                   watch a videotape?

22         A.         I believe I --- I'm not sure  
23                   what the city was, but I know he went  
24                   to Western Pennsylvania to meet with  
25                   the FBI relative to a video, yes.

1 Q. What did he tell you about ---  
2 did he tell you about the meeting  
3 ahead of time?

4 A. Yes, he did.

5 Q. And what did he tell you about  
6 it?

7 A. I believe he contacted me,  
8 telling me that the FBI had a  
9 videotape and that they wanted him to  
10 travel to Western Pennsylvania to  
11 meet with them. Now, I'm again --- I  
12 believe that this is the  
13 circumstance. He indicated that he  
14 wanted to do that, but in order to  
15 maintain confidentiality, felt that  
16 he should take a day off and should  
17 use his own vehicle, rather than to  
18 have people ask a lot of questions.  
19 I approved that he would do that and  
20 authorized him to use his own car.  
21 And I believe I specifically said  
22 subsequent to this then because this  
23 is a work assignment you should get  
24 your day back. And following the  
25 meeting I believe he came to the

1 house with the videotape and I viewed  
2 part of it.

3 Q. What did he tell you about why  
4 they needed to meet at the Holiday  
5 Inn?

6 A. I don't recall.

7 Q. Did he tell you anything about  
8 why he was the person that had to pay  
9 for the room at the Holiday Inn?

10 A. No.

11 Q. Did he ever tell you that the  
12 FBI agents really just wanted to meet  
13 him somewhere halfway that would be  
14 more convenient for both parties?

15 A. I believe he mentioned that,  
16 yes.

17 Q. And did he ever tell you that  
18 the FBI agents left it up to him  
19 where to meet?

20 A. I believe he indicated that it  
21 was a mutual decision.

22 Q. Did he tell you that they  
23 would have been just as happy for him  
24 to come to FBI headquarters?

25 ATTORNEY BAILEY:

3 A. Not that I recall.

4 BY ATTORNEY GUIDO:

5 Q. Did he tell you that they  
6 would be willing and able to go to  
7 the State Police barracks?

8 A. Not that I recall.

9 Q. And did you know that a prior  
10 meeting that he had had with them,  
11 when he had listened to body wires  
12 before, had been held at the Bedford  
13 barracks?

14 A. I don't recall.

15 Q. So was it --- was it your  
16 decision or Captain Ober's decision  
17 that this hotel room should be rented  
18 in Indiana to watch the videotape?

19 A. It would have been his  
20 decision.

21 Q. Now, when --- and again,  
22 you're relying on facts as he  
23 represented them to you: correct?

24 A. Correct.

25 Q. . . You did not call the FBI and

1 say, what do you need to meet with  
2 Captain Ober about?

3 A. No, I did not.

4 Q. Or ask them, you know, where  
5 do you guys need to meet or anything  
6 like that?

7 A. No.

8 Q. You just trusted him and left  
9 everything to him?

10 A. Correct.

11 Q. Who finally --- how long was  
12 this all going on in confidential  
13 mode?

14 A. It was from, obviously,  
15 October 5th until some time in late  
16 April or early May. I'm not certain  
17 of the date.

18 Q. And do you know who finally  
19 made the decision to tell that  
20 Colonel Evanko should know about the  
21 investigation?

22 A. I had been inquiring of  
23 Captain Ober when the FBI concludes  
24 or reaches the point where they've  
25 gone far enough in the investigation

1       that confidentiality no longer  
2       implies you need to inform me so that  
3       we can let the commissioner know.

4       Q.       I want to back up just a  
5       little bit, because I realize there's  
6       something we passed over. When  
7       Captain Ober was first contacted back  
8       in October and you told him not to  
9       tell anybody else, did you also order  
10      him not to put anything --- not to  
11      document this in any way, the  
12      contact?

13      A.       Not that I recall.

14      Q.       Do you recall that you ever  
15      ordered him or directed him not to  
16      fill out an IAD complaint worksheet  
17      or anything like that?

18      A.       We had a brief discussion  
19      relative to at what point it would be  
20      appropriate to fill out an IAD  
21      worksheet in the event that  
22      ultimately PSP officers were  
23      involved. I don't recall what  
24      meeting that was that that would have  
25      occurred.

1 Q. Did you ever tell Captain Ober  
2 that he should have the FBI send  
3 things to him home relevant to this?

4 A. Not that I recall.

5 Q. And I think then that kind of  
6 brought us up to where you were  
7 saying that you had been waiting for  
8 updates from Captain Ober about when  
9 you were released from  
10 confidentiality?

11 A. Correct.

12 Q. And when was that?

13 A. As I said, sometime in late  
14 April or early May. I'm not certain  
15 of the date.

16 Q. Then I guess the answer to my  
17 question was, was it you that decided  
18 that Colonel Evanko should know about  
19 the investigation?

20 A. Well, I think that we both,  
21 from the inception, knew that Colonel  
22 Evanko needed to know about the  
23 investigation upon release of  
24 confidentiality. It was a matter of  
25 because my knowledge of this was so

1 limited, having a time and a place  
2 where we were both together and the  
3 commissioner was accessible to us  
4 that we could advise him.

5 Q. And when you told him about  
6 it, it was Wednesday, May 12th, 1999;  
7 is that right?

8 A. I believe that's correct.

9 Q. And your May 18th memo, which  
10 was Exhibit One, was written down  
11 after that; correct?

12 A. Correct.

13 Q. Basically just documenting  
14 what had occurred?

15 A. Correct.

16 Q. Now, when Ober finally came to  
17 you and said, okay, we're released  
18 from confidentiality, what was said  
19 during that conversation?

20 A. I don't recall.

21 Q. Do you recall any of it?

22 A. No, I would be speculating  
23 what was said.

24 Q. When did you learn about  
25 Trooper Stanton's involvement?

1 A. I believe when the videotape  
2 was presented. He may have, at a  
3 previous meeting, indicated his name  
4 somewhere along the line.

5 Q. Were you ever told that the  
6 FBI had determined that Trooper  
7 Stanton was the only member of the  
8 State Police involved in --- the only  
9 member and that that could be turned  
10 over to the State Police to handle?

11 A. Repeat the question.

12 Q. Were you ever advised by  
13 Captain Ober or anybody else that the  
14 FBI ultimately determined that  
15 Trooper Stanton was the only member  
16 of the State Police that had engaged  
17 in criminal conduct and that the  
18 investigation was then turned over to  
19 the State Police to handle?

20 A. Captain Ober would have  
21 advised me of that at some point.

22 Q. Do you know if that would have  
23 been before or after the FBI released  
24 him from confidentiality?

25 A. It would have been conjunctive

1 with that in my mind, but I don't  
2 have any way of saying, yeah, that's  
3 exactly when it occurred.

4 Q. I understand. Where were you  
5 --- well, first of all, were you and  
6 Captain Ober together when we talked  
7 to Colonel Evanko about the  
8 investigation?

9 A. Yes, we were.

10 Q. And where was that? Where did  
11 this conversation take place?

12 A. I believe it was in the  
13 Director of Bureau of Training and  
14 Education's office at the academy in  
15 Hershey.

16 Q. How did that come about?

17 A. I had been at the academy with  
18 the commissioner and the other  
19 deputies for, I'd say, an executive  
20 session of the command staff. I'm  
21 not certain why Captain Ober was at  
22 the academy that day, but he was.  
23 And I took the opportunity of having  
24 the three of us together to ask the  
25 commissioner if we might have a few

1 minutes of his time to explain this.

2 Q. Well, tell us about that  
3 opinion that you have. Was this just  
4 with Captain Ober, you and the  
5 commissioner?

6 A. Yes.

7 Q. Okay. Tell us about that.

8 A. We explained to the  
9 commissioner, as best we can, my  
10 recollection of what we've talked  
11 about here today and Captain Ober  
12 explained his involvement in this and  
13 what the outcome was and talked to  
14 the commissioner.

15 Q. What reason did you give  
16 Colonel Evanko for not telling him  
17 about that earlier?

18 A. The same reason I described  
19 today, the request for  
20 confidentiality.

21 Q. That the FBI had requested  
22 that?

23 A. Correct.

24 Q. Did you have a subsequent  
25 meeting then with Colonel Evanko and

1 with Lieutenant Colonel Coury?

2 A. Lieutenant Colonel Coury was  
3 in an adjacent office. The  
4 commissioner asked him to come in and  
5 the room and then Captain Ober and I  
6 then re-explained it to Lieutenant  
7 Colonel Coury then also.

8 Q. So it was kind of one meeting,  
9 it's just he was asked to come in?

10 A. Correct.

11 Q. And did you then reiterate  
12 with Colonel Coury then that the FBI  
13 had directed Captain Ober not to  
14 disclose this information to anybody?

15 A. Correct.

16 Q. Now, you talked to --- that  
17 was on May 12th. On May 13th, you  
18 talked to Barbara Christie, the chief  
19 counsel of the State Police, about  
20 the FBI investigation. I was curious  
21 as to what prompted you to do that.

22 ATTORNEY BAILEY:

23 What date was that,  
24 Counsel?

25 ATTORNEY GUIDO:

1                   May 13th, 1999.

2                   BY ATTORNEY GUIDO:

3                   Q.         On May 13th, 1999, the day  
4                   after you disclosed this to the  
5                   commissioner, you also talked to  
6                   Barbara Christie, chief counsel of  
7                   the State Police, about the FBI  
8                   investigation and I said I was  
9                   curious as to what prompted you to do  
10                  that.

11                  A.         The commissioner's respond to  
12                  the information was such that --- I  
13                  mean, he was very agitated. He was  
14                  obviously displeased. He initially,  
15                  verbally questioned, rhetorical  
16                  questions, why wouldn't the FBI tell  
17                  me about this? Why wouldn't Louie  
18                  Freeh tell me about this? Louie  
19                  Freeh is a personal friend of mine.  
20                  He then indicated that he would have  
21                  the FBI agents transferred for not  
22                  coming to him with this. The next  
23                  day, the commissioner, again, and the  
24                  deputies met. He asked me to explain  
25                  to Lieutenant Colonel Westcott, who

1 was in that meeting at that time,  
2 what had occurred and then I went  
3 through the story of what I knew  
4 again. At that point, he directed  
5 that we should have an investigation,  
6 but there should be a couple majors  
7 assigned to this to find out, you  
8 know, what the facts of this case  
9 were. Ms. Christie is the  
10 Department's chief counsel. I needed  
11 to run the circumstances past her as  
12 I knew them to see whether my  
13 decisions were reasonable. I also,  
14 through this process, on my mind was  
15 if, based on the information that I  
16 had, if we disclose this information,  
17 are we interfering with a federal  
18 case, a federal investigation, was  
19 that thinking correct or, you know,  
20 was I off base.

21 Q. Again, based on your belief  
22 that they didn't want you to tell  
23 anyone?

24 A. Correct.

25 Q. Who else did you discuss the

1 situation with?

2 A. After the release of  
3 confidentiality ---

4 Q. Yes.

5 A. --- and our meeting with the  
6 commissioner, I've discussed it with  
7 a lot of people.

8 Q. Can you give me a few names?

9 A. Yes. I've discussed it with  
10 all of my bureau directors. I've  
11 discussed it with Mary Woolley, from  
12 the Governor's office. I've  
13 discussed it with Lee Ann Labecki, I  
14 believe, Major Seilhamer, a number of  
15 people.

16 Q. Do you have any idea how any  
17 of those people would have found out  
18 about the FBI investigation as early  
19 as March of 1999?

20 A. No.

21 Q. Let me just go over a couple  
22 of them to see if you have any idea  
23 how they might have known.

24 ATTORNEY BAILEY:

25 Are you representing

1           that they knew, Counsel?

2           ATTORNEY GUIDO:

3           Yes, I am.

4           ATTORNEY BAILEY:

5           We may have to depose  
6           you.

7           ATTORNEY GUIDO:

8           No. We'll have to  
9           depouse them.

10          ATTORNEY BAILEY:

11          We'll depouse you before  
12          it's over.

13          BY ATTORNEY GUIDO:

14          Q.        But in any event for now,  
15          regardless of the basis for this, I  
16          want to you know what you knew. Do  
17          you know how Nan McLaughlin, the  
18          deputy chief of staff for the  
19          governor, knew about the FBI's  
20          investigation in March of 1999?

21          A.        No, I don't.

22          Q.        Do you have any idea how  
23          Charles Zogby, the Governor's  
24          director of policy, would have found  
25          out?

1 A. Not that I know of.

2 Q. How about Pete Tartline, the  
3 Governor's deputy policy director?

4 A. I'm not aware.

5 Q. Do you have any idea how Lee  
6 Ann Labecki, who replaced Tartline as  
7 the deputy director of policy, would  
8 have found out about it in March of  
9 1999?

10 ATTORNEY BAILEY:

11 Counsel, can I  
12 respectfully request that you  
13 spell these names for us. I  
14 want to make sure I get the  
15 spelling correct.

16 ATTORNEY GUIDO:

17 I'll spell them, but  
18 not right at this moment.

19 ATTORNEY BAILEY:

20 But she needs them,  
21 too.

22 ATTORNEY GUIDO:

23 Well, I'll get them for  
24 her.

25 ATTORNEY BAILEY:

1                   Okay. You make sure I  
2                   get them.

3                   ATTORNEY GUIDO:

4                   We will.

5                   ATTORNEY BAILEY:

6                   Was that Deann did you  
7                   say?

8                   ATTORNEY BAILEY:

9                   Lee Ann Labecki.

10                  ATTORNEY BAILEY:

11                  Lee Ann. I thought so.  
12                  I didn't hear that.

13                  BY ATTORNEY GUIDO:

14                  Q. And if they found out this  
15                  information from Mary Woolley, you  
16                  don't know how she knew it?

17                  A. Not in March of 1999.

18                  Q. Right, March of 1999.

19                  A. No, I do not.

20                  Q. But you would have talked to  
21                  her about it then after you had  
22                  talked to the colonel about it?

23                  A. I did not talk to Ms. Woolley  
24                  about it, until release from  
25                  confidentiality by the FBI.

1 Q. Okay. But that would be  
2 around the same time that you talked  
3 to Colonel Evanko about it?

4 A. Yes.

5 Q. I mean, if Mary Woolley was  
6 also trying to discuss the issue with  
7 Barbara Christie, for example, she  
8 would know because you had just told  
9 her?

10 A. Correct.

11 Q. Now, the administrative  
12 inquiry that was done, you said that  
13 Major Werts, maybe you didn't say,  
14 but we know eventually Major Werts  
15 and Major Williams did an  
16 investigation in the summer of 1999.  
17 Did you ever find out when that  
18 investigation was completed?

19 A. The commissioner had a  
20 conversation with me, I believe it  
21 was the last Wednesday of September  
22 of 1999.

23 Q. And he told you it was over?

24 A. Yes, he did.

25 Q. Did he tell you anything about

1 the outcome of that?

2 A. He told me that Captain Ober  
3 had misrepresented the facts as he  
4 provided them to me --- and as far as  
5 the investigation, that's really all  
6 he told me about the investigation.

7 Q. Did you ever ask Captain Ober  
8 if that investigation was over?

9 A. I don't recall whether I did  
10 or not. I believe I did.

11 Q. Do you know if you mentioned  
12 that to Major Waugh as well?

13 A. I'm not certain.

14 ATTORNEY GUIDO:

15 I want to take about  
16 five minutes break, because I  
17 want to make sure I don't have  
18 anymore questions for you.

19 OFF RECORD DISCUSSION

20 ATTORNEY BAILEY:

21 Colonel, can you sit  
22 down for one second. The way  
23 the rules read, we're supposed  
24 to suspend this on camera.

25 ATTORNEY GUIDO:

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1                   We did.

2                   VIDEOGRAPHER:

3                   It's 10:44, 3/25/2002,  
4                   we're going to suspend.

5                   OFF VIDEOTAPE

6                   SHORT BREAK TAKEN

7                   ATTORNEY BAILEY:

8                   Ladies and gentlemen,  
9                   please, be advised that a  
10                  recording device is in  
11                  operation.

12                  VIDEOGRAPHER:

13                  10:58 a.m., back on the  
14                  record.

15                  ON VIDEOTAPE

16                  BY ATTORNEY GUIDO:

17                  Q.         Okay. I just want to clarify  
18                  one thing. Back to the IIMS project.  
19                  I think I was trying to ask you, but  
20                  I didn't really understand it at all  
21                  that well at the time, but there was  
22                  a larger technology initiative that  
23                  was comprised of not only the IIMS  
24                  project, but also the Enterprise  
25                  Network; is that right?

1 A. Well, technically Enterprise  
2 Network is a component of IIMS. It  
3 was the first thing that needed to be  
4 completed in order to create the  
5 foundation upon which IIMS was built.  
6 The contract for the Enterprise  
7 Network had already been let. I  
8 believe it was in June of 1998 to IBM  
9 and it was in process when I got my  
10 job.

11 Q. When you got your job. You  
12 kind of trailed off so I ---.

13 A. When I got my job as deputy,  
14 that contract was already signed and  
15 IBM was the prime contractor on it.

16 Q. The Enterprise Network, I  
17 guess that's the foundation for which  
18 everything else can come from?

19 A. It converted our, as I  
20 understand it, it converted our clean  
21 system from dumb terminals and  
22 dedicated lines to a TCP/IP  
23 configuration that allows you to  
24 transmit information more easily. It  
25 also built our e-mail process, put

1       desktops on people's desk,  
2       proliferated use of computer  
3       technology throughout the Department.

4       Q.       So as part of that first  
5       project, the Enterprise Network, the  
6       Department had to buy like a lot of  
7       computers, I guess, and a lot of  
8       hardware?

9       A.       Yes, we did.

10      Q.       And so that would have  
11       actually been a large portion of that  
12       \$100 million for the project,  
13       wouldn't it be?

14      A.       No. That contract was prior  
15       to my coming on the job. In fact,  
16       many of those computers had already  
17       been expended before I got my job as  
18       deputy commissioner of staff.

19      Q.       Do you know for certain that  
20       the price of computers, et cetera, is  
21       not part of the overall \$100 million,  
22       whenever you hear \$100 million  
23       project?

24      A.       I'm very sure that it's not.  
25       And the Enterprise Network project,

1 as it were, cost \$35 million. The  
2 total bottom line on IIMS is going to  
3 come closer to \$120 to \$130 million.  
4 And that did not count --- I don't  
5 believe it counted the Enterprise  
6 Network.

7 Q. Who would know that for  
8 certain?

9 A. I would ask Mr. Grummet  
10 (phonetic) is our fiscal officer, who  
11 would probably know. And Mr.  
12 Hartley, who is in information  
13 technology plans and controls and  
14 handles the contracting for the  
15 technology initiatives would probably  
16 know.

17 Q. Mr. Grummet, you said he's the  
18 fiscal guy. Does he like take care  
19 of the budget and things like that?

20 A. Yes, he does.

21 Q. All right.

22 ATTORNEY GUIDO:

23 Thank you.

24 ATTORNEY BAILEY:

25 Okay. Colonel, now

1                   it's my turn.

2                   EXAMINATION

3                   BY ATTORNEY BAILEY:

4                   Q.         Well, first of all, I want to  
5                   thank you very much for your  
6                   responses to my opponents ---  
7                   opposing Counsel's questions. And I  
8                   have a series of questions for you.  
9                   Now, my methodology is a little bit  
10                  different. What we're out to do here  
11                  is to establish as completely as we  
12                  can, a good fact record. And in that  
13                  regard, I would invite and, in fact,  
14                  encourage you, if at any time when I  
15                  ask a question not to refrain from or  
16                  feel shy, and I'm not suggesting that  
17                  you would, to ask me what I mean by a  
18                  question, and even more because I  
19                  think that will save us time, where  
20                  I'm going with a question. So I'll  
21                  be pleased to give you an offer of,  
22                  you know, not just what I mean by a  
23                  particular question. If it seems  
24                  awkward or misdirected, but also  
25                  about where I want to go generally.

1           I also like to move around in  
2 different areas and structure my  
3 deposition. And in that regard, I'll  
4 try to inform you where I'm going  
5 when I do a change of direction to  
6 give you a chance to do a memory  
7 change. Okay?

8           Where I'd like to begin is in  
9 the area --- in the fall of 1998, in  
10 that area where Captain Ober comes to  
--- okay. I'd like to talk about  
12 that. I don't mean to be facetious  
13 with this question. I mean it as a  
14 very serious question. Have you ever  
15 known, had any experiences which  
16 would indicate to you that Captain  
17 Ober might be, and don't laugh at me  
18 now, clairvoyant or prophetic, able  
19 to foretell the future or have some  
20 connection with some sort of psychic  
21 power or ability that might enable  
22 him to foretell the future?

23 A.       No.

24 Q.        I think if I understand the  
25 testimony correctly, as well as the

1       characterization of testimony that  
2       were engendered in questions to you  
3       by opposing counsel, Mr. Ober came to  
4       you sometime on or about October 5th  
5       of 1998; is that correct, sometime  
6       around that day?

7       A.       Yes.

8       Q.       And at that time  
9       substantively, he indicated to you  
10      that there was information, allegedly  
11      imparted to him by the FBI, if it  
12      didn't descend from above, that there  
13      might be a colonel or somebody of  
14      that rank involved in this terrible  
15      thing that the FBI was investigating.  
16      Now, am I correct?

17      A.       Yes. He said that the term  
18      colonel had been used.

19      Q.       Okay. So here's Captain Ober  
20      and it's October the 5th. It's 1998  
21      and one of the things that is a part  
22      of this burden that he's carrying is  
23      this portent that somebody with the  
24      rank of colonel could possibly be a  
25      part of that; is that correct?

1 A. Yes.

2 Q. You know, incidentally, was  
3 Captain Ober, you know, was he  
4 relishing this or was he upset and  
5 concerned about the seriousness of  
6 this?

7 A. At no time did Captain Ober  
8 give the impression that he was  
9 relishing this. He seemed genuinely  
10 concerned about it and somewhat  
11 caught in the middle of what do I do?  
12 But he never relished having his role  
13 or having this information.

14 Q. I don't profess to be an  
15 overly religious person, but are you  
16 familiar with the Disseminatey --- the  
17 let the cup pass from me metaphor  
18 from the Bible?

19 A. You would have to explain it.

20 Q. That's all right. Is it fair  
21 to say that Captain Ober was burdened  
22 and concerned that this information  
23 had come to me by here I have this  
24 thing in my hands, what do I do?

25 A. That would be a correct

1 assessment.

2 Q. Okay. And my very capable  
3 opponent had indicated, in a  
4 characterization of testimony, that I  
5 believe I had objected at the time  
6 that it was asked, that sometime on  
7 or about the 13th of October 1998,  
8 through the erstwhile efforts of our  
9 FBI, some sort of tape recording had  
10 been made or some information had  
11 come to the FBI that the word colonel  
12 was used; is that correct?

13 A. That's what I am led to  
14 believe, yes.

15 Q. Okay. Now, let me ask you  
16 something, Colonel Hickes, are there  
17 any facts known to you that would  
18 indicate that Captain Ober worked  
19 with the CIS in that case or worked  
20 directly in the basic investigation  
21 in this matter?

22 A. I have no knowledge that he  
23 did, no.

24 Q. And I think you've already  
25 answered the question that you don't

1 know of any prophetic or  
2 fortune-telling abilities on Captain  
3 Ober's part. Let me ask you and go  
4 back again --- I want to go back to  
5 that conversation that occurred  
6 sometime in early October, around the  
7 5th or so of October when Captain  
8 Ober came to you. Do you remember  
9 where Colonel, now, Colonel Conly  
10 was?

11 A. When I received my appointment  
12 of deputy commissioner of staff,  
13 which I believe would have been the  
14 Friday before, I believe Lieutenant  
15 Colonel Conly was promoted from  
16 captain to major and he would have  
17 been the trooper commander, I  
18 believe, in troop B, Washington, up  
19 until Friday and then Monday he was  
20 promoted. I believe that's the  
21 sequence of events.

22 Q. So the sequence of events, you  
23 know, they may be jumbled just a  
24 little bit. I mean, a little while  
25 ago there was then Major Conly who

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1 was moving into, what, the head of  
2 BPR?

3 A. Correct.

4 Q. Of which IAD is a division?

5 A. Correct.

6 Q. IAD was where Captain Ober  
7 was; right?

8 A. Correct.

9 Q. And that Major Conly had come  
10 from being troop commander of troop  
11 B?

12 A. Correct.

13 Q. Did you ever find out where  
14 Mr. Stanton was from?

15 A. I believe he was in troop B.

16 Q. Did you ever find out, did you  
17 ever come to learn that Major Conly  
18 was aware of or knew certain  
19 political figures in Allegheny  
20 County?

21 A. I'm not familiar with whether  
22 he is or is not associated with them.

23 Q. Okay. Did any information  
24 ever come to you to indicate that  
25 Major Conly knew a fellow by the name

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1 of Doc Fielder?

2 A. No, not that I know of.

3 Q. All right. Fine. Do you know  
4 who Doc Fielder is?

5 A. No, I don't.

6 Q. Do you know who Lenny Bodack  
7 is?

8 A. No, I don't.

9 Q. Joe Preston?

10 A. I believe Mr. Preston was a  
11 legislator. I'm not sure whether he  
12 still is.

13 Q. Joe Preston is still a  
14 legislator. Now, getting back to  
15 that --- to these events that  
16 surround this first week in October,  
17 you'd indicated that you had the in  
18 response to opposing Counsel's  
19 questions, that you had a direct  
20 meeting of some type, you're not  
21 certain where it was, with Captain  
22 Ober; is that correct?

23 A. Correct.

24 Q. Now, prior to that, prior to  
25 that, Colonel Hickes, had you had any

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1 knowledge about these allegations  
2 that the FBI had concerning hiring  
3 processes within the Pennsylvania  
4 State Police?

5 A. Not that I recall.

6 Q. Now, at this juncture, I'm  
7 going to come back now to where we  
8 are, but what I want to do is, again,  
9 I want to do one of my little change  
10 of directions here. Okay. Have you  
11 ever known an academy class to have  
12 been retested by order of the  
13 commissioner?

14 A. No, I haven't.

15 Q. Do you have any knowledge of  
16 any favoritism of hiring of troopers'  
17 sons taking place within the  
18 Pennsylvania State Police?

19 A. I have no knowledge, no.

20 Q. Are there internal audit  
21 procedure in the Pennsylvania State  
22 Police in compliance, internal  
23 compliance, with regulations and  
24 regulation processes?

25 A. The systems and process review

1 division of the Bureau of  
2 Professional Responsibility had  
3 responsibility for, I'll call it an  
4 internal audit on unit policies and  
5 procedures.

6 Q. On compliance-type issues,  
7 adherence to regulations and  
8 processes and program efficiency,  
9 maybe that type of thing?

10 A. Generally speaking, yes.

11 Q. Okay, sir. Now, do you know  
12 whether or not there's ever been an  
13 internal evaluation in the  
14 Pennsylvania State Police in the  
15 hiring process?

16 A. I don't know.

17 Q. Okay. Now, it's my  
18 understanding that in response to  
19 questions on Direct, that you had  
20 indicated that your recollection is  
21 that there was some type of an issue  
22 here, a fact issue, with moving from  
23 band B to band A, that that would  
24 somehow make you more available for  
25 the hiring processes; is that

1 correct, or some sort of sorting  
2 process?

3 A. That's my recollection, yes.

4 Q. Now, I'm going to take you  
5 back now, again, to the October 5th  
6 time when Captain Ober was talking to  
7 you there. Did Captain Ober indicate  
8 any awareness of a previous  
9 investigation having been done by the  
10 FBI into this thing?

11 A. No.

12 Q. And of your own knowledge,  
13 either by rumor or by virtue of some  
14 official document had you been aware  
15 of any previous investigation by the  
16 FBI?

17 A. No, I had not.

18 Q. Well, who's head of the  
19 western organized crime group out  
20 there?

21 A. I have no idea right now.

22 Q. Frank Monaco?

23 A. He's the troop commander in  
24 group A, Greensburg, currently. I  
25 don't know what his capacity was in

1 1998.

2 Q. Do you know if Frank was in  
3 charge of the organized crime  
4 division, on or about '96, '97, that  
5 area in there, '95?

6 A. He may have been. I don't  
7 know for sure.

8 Q. Okay. Do you know who was in  
9 charge of Western AID (sic) --- the  
10 Western Pennsylvania, I don't know  
11 what your term is, of IAD at that  
12 time?

13 A. No, I don't recall.

14 Q. Have you ever had an  
15 opportunity --- strike that. Strike  
16 the form on that.

17 Do you know whether the FBI  
18 had ever gone to the western division  
19 of the crime unit or IAD with  
20 information about Mr. Stanton?

21 A. I don't have any firsthand  
22 knowledge of that, no.

23 Q. And do you know whether or not  
24 that information was ever  
25 communicated up to the, quote,

1 unquote, front office?

2 A. I don't know.

3 Q. Do you know whether Lieutenant  
4 Colonel Coury ever received any  
5 information from Western AID or from  
6 the organized crime division out  
7 there in Western Pennsylvania about  
8 Mr. Stanton and his activities?

9 A. No, I don't.

10 Q. Did you ever talk to FBI agent  
11 Shooey about what occurred out there?

12 A. No, I did not.

13 Q. Do you know whether Mr. Monaco  
14 may have at some time called Colonel  
15 Coury prior to when the FBI went to  
16 Captain Ober about the activities  
17 allegedly?

18 Colonel Hickes, let me strike  
19 the previous question. Let me  
20 rephrase it this way.

21 Do you know whether Lieutenant  
22 Coury had ever gone to Colonel Evanko  
23 with information about some FBI  
24 investigation into the practices of  
25 Mr. Stanton, his activities?

1 A. No, I don't.

2 Q. Did you ever hear of Mr.  
3 Stanton and his alleged involvement  
4 in criminal activity or alleged  
5 criminal activity, prior to when  
6 Captain Ober had come to you?

7 A. No, not that I recall.

8 Q. Do you know of any  
9 investigations into the activities of  
10 Mr. Stanton prior to when the FBI  
11 came to Captain Ober?

12 A. Not that I recall, no.

13 Q. Well, I mean, Mr. Coury has  
14 testified, I think opposing counsel  
15 will agree with me, that he got a  
16 call from Monaco about Mr. Stanton  
17 sometime prior to October of 1998.  
18 Do you know what Lieutenant Colonel  
19 Coury ever did with that information?

20 ATTORNEY CHRISTIE:

21 Excuse me, Counsel.

22 That's a statement of  
23 testimony. First, I'm going  
24 to object to the question as  
25 to form and also object to it

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1           as to even being in existence  
2           with regard to that being the  
3           testimony of the partial  
4           deposition of Colonel Coury,  
5           so as to not mislead Colonel  
6           Hickes in his answer to  
7           whatever your question is. I  
8           would just object to the form  
9           of the question, whether or  
10          not that was, in fact, ever  
11          information provided by  
12          Colonel Coury in a deposition.

13           ATTORNEY BAILEY:

14           Well, I hope you enjoy  
15          reading it as much as I do.

16           ATTORNEY CHRISTIE:

17           I'm looking into it.

18           BY ATTORNEY BAILEY:

19           Q.        Let me ask it this way. The  
20          point, in fact, is that you don't  
21          know of any such thing do you?

22           A.        No, I don't.

23           Q.        And you don't know if the FBI  
24          --- in fact, let me ask you  
25          something, sir. Colonel Hickes,

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1 until today, where you heard by these  
2 questions implications that there was  
3 a prior awareness by the Pennsylvania  
4 State Police of Mr. Stanton's  
5 activities. Prior to today, if that  
6 was the case, and Lieutenant Colonel  
7 Coury's deposition will speak for  
8 itself, you didn't know anything  
9 about that prior to today; did you,  
10 whether there had been any  
11 information available to the  
12 Pennsylvania State Police if indeed  
13 there was; did you?

14 A. I had no official knowledge of  
15 that, no.

16 Q. Any rumor knowledge of it?

17 A. Captain Ober indicated to me  
18 that that may have been the case.

19 Q. When did Captain Ober indicate  
20 that to you? Was it after October  
21 5th, 1998?

22 A. Yeah. It would have been  
23 maybe a year ago.

24 Q. Okay. So about a year ago  
25 Captain Ober made some reference to

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1 the fact that, hey, there was some  
2 prior investigation?

3 A. Correct.

4 Q. And to the best of your  
5 knowledge, as you sit here today, the  
6 Pennsylvania State Police, if indeed  
7 Colonel Coury himself was told, did  
8 absolutely nothing to internally  
9 investigate whether or not Trooper  
10 Stanton was involved in some sort of  
11 job selling scheme; am I correct?

12 A. I don't know.

13 Q. Do you know whether the FBI  
14 ever expressed any concern that the  
15 lack of activity by the Pennsylvania  
16 State Police on the prior in part of  
17 information to the organized crime  
18 group and Western AID --- IAD, I'm  
19 sorry. Whether that played any role  
20 in their bringing information to  
21 Captain Ober?

22 A. I don't know.

23 Q. You have no way of knowing.  
24 Only the FBI would know that; is that  
25 correct?

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1 A. I would assume so, yes.

2 Q. I would, too. Now, if I  
3 understand it correctly, when Colonel  
4 Coury testified, he indicated some  
5 concerns about the FBI ability, not  
6 that it would ever be intentional,  
7 but their ability to keep their mouth  
8 shut, i.e., act in a political way.  
9 I mean, I just can't imagine the FBI  
10 doing that, but I want to ask you,  
11 I'm just curious from your knowledge  
12 and experience, do you have any  
13 knowledge of experience that would  
14 indicate that the FBI might be loose  
15 with information, that you know of?

16 A. Not that I know of.

17 Q. Aside from reading the  
18 newspaper, watching TV, reading  
19 books, that sort of thing, as a  
20 professional, you have no information  
21 known to you that would indicate that  
22 the FBI has loose lips; is that fair  
23 to say?

24 A. That's correct.

25 Q. All right. Now, Counsel has

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1       asked questions about this issue  
2       surrounding Mr. Ober telling you that  
3       the FBI wanted confidentiality.

4       Okay. In fairness to Counsel, I  
5       believe she characterized FBI  
6       testimony, at least to some extent,  
7       as not being consistent with that.

8       Now, let me ask you a series of  
9       questions based upon your knowledge  
10      and experience as a professional  
11      police officer. Is it okay to tell a  
12      target you're investigating them?

13      Would you go and inform a target that  
14      someone was investigating them,  
15      unless there were some need or  
16      request to?

17      A.       Generally speaking, no.

18      Q.       Okay. And if --- how many  
19      colonels are there in the  
20      Pennsylvania State Police?

21      A.       There is one full colonel.

22      Q.       One full colonel.

23      A.       And three lieutenant colonels.

24      Q.       Three lieutenant colonels.

25      Have you ever been in the Army or the

1 Navy or the Army, Marine Corp?

2 A. No.

3 Q. Well, when you talk about ---  
4 call somebody, let's say someone---  
5 you're a lieutenant colonel; right?

6 A. Correct.

7 Q. Do they say, hey, lieutenant  
8 colonel or is, hey, colonel?

9 A. It's, hey, colonel.

10 Q. Hey, colonel. I always blame  
11 that on the French, I guess. The  
12 point fact is when someone addresses  
13 you by that title, which is, you  
14 know, a very respectful position, of  
15 course, the reference is lieutenant  
16 colonel or full bird, whatever it is,  
17 it's colonel; right?

18 A. Yes.

19 Q. It's colonel. Okay. So if  
20 you took all of the lieutenant  
21 colonels and all the colonels in the  
22 Pennsylvania State Police and you  
23 added them up on October the 5th,  
24 1998, can you tell us how many there  
25 were?

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1 A. Four.

2 Q. Had the number changed  
3 dramatically as of October 13th,  
4 1998?

5 A. No.

6 Q. So if there was a prophecy  
7 there, the prophecy on how many  
8 lieutenant colonels or colonels there  
9 were total all added together,  
10 wouldn't have exceeded four in the  
11 fall of 1998; am I correct, four  
12 people?

13 A. Correct.

14 Q. Now, if that group was a  
15 potential target of an FBI  
16 investigation, would you go and tell  
17 them?

18 A. I would not.

19 Q. Okay. Now, the --- I believe  
20 the FBI testimony was that there  
21 wasn't any recollection of  
22 confidentiality but it was expected.  
23 Now, based on that --- and I believe  
24 that came from Agent Kush. And I  
25 make that representation to you based

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1       upon my recollection of the record  
2       and I will yield to Counsel's  
3       comments, if they disagree with that.  
4       Now, my understanding of the initial  
5       discussion between you and Captain  
6       Ober was that he expressed an  
7       awareness that by definition you  
8       could not have been included in that  
9       category at the time this was going  
10      on; am I correct?

11      A.       He expressed that there was an  
12      interval of time between 1995 and  
13      1998 that I was not in a position,  
14      either A, to be a lieutenant colonel  
15      or, B, because I was in the Bureau of  
16      Liquor Enforcement, probably  
17      influenced the hiring process. He  
18      did acknowledge that I had been a  
19      lieutenant colonel before and if this  
20      thing predated 1995, then I was a  
21      lieutenant colonel then also. But he  
22      did express by his reasoning I was  
23      not one who would have been involved  
24      as a colonel.

25      Q.       And was Colonel Evanko, when

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1 you eventually told Colonel Evanko,  
2 my understanding is that he exhibited  
3 --- I think you used the term  
4 agitation, that he was very agitated.  
5 I think that's the way you described  
6 it?

7 A. Yes, I did.

8 Q. Okay. Now, do you know if  
9 Colonel Evanko ever said to Captain  
10 Ober, Captain, you did the right  
11 thing? Did he ever say that to him?

12 A. Not that I know of.

13 Q. Well, you know, Colonel  
14 Hickes, you know, being a witness is  
15 not a pleasant thing, but it's a  
16 question I have to ask. Did you do  
17 the right thing?

18 A. I think I did, based on the  
19 information I had at the time.

20 Q. Well, for what it is worth, so  
21 do I and that's not worth anything.  
22 I'm not a witness here. I think, so  
23 do I. That's just an opinion. Now,  
24 when Colonel Evanko expressed  
25 agitation upon first being informed,

1 he said certain things about Louie  
2 Freeh --- how do you spell Louie  
3 Freeh's last name? Do you know how  
4 to spell it?

5 A. I'm not certain. I think it's  
6 F-R-E-E-H. I'm not positive.

7 Q. And he expressed upset about  
8 the FBI, about I'm their friend or  
9 something and they didn't tell me; is  
10 that correct?

11 A. Yes.

12 Q. Well ---.

13 A. I don't --- let me rephrase.  
14 He didn't use those words.

15 Q. No, no, no. You used your own  
16 words and they'll stand for  
17 themselves. I'm just going back in  
18 my mind to your testimony and, of  
19 course, what my client has told me  
20 naturally. But the point in fact is  
21 that, bottom line, he expressed  
22 disappointment that the FBI had not  
23 informed him or not brought this  
24 matter to your attention?

25 A. That's correct.

1 Q. Okay. Now, do you know  
2 whether the FBI had ever brought  
3 other investigations into, God  
4 forbid, the Pennsylvania State Police  
5 or law enforcement in Pennsylvania to  
6 Colonel Evanko's attention?

7 A. I don't know.

8 Q. Did Colonel Evanko ever say  
9 anything on that March 12th --- May  
10 12th, the day that you told me, you  
11 know, did they suspect me?

12 A. I think he did utter those  
13 words or something similar, yes.

14 Q. Well, did he ever say to you,  
15 Colonel Hickes, did he ever say to  
16 you, Bob, Colonel, Mr. Hickes, did  
17 you think I was involved in this?  
18 Did he ever ask you that?

19 A. I don't recall. I really  
20 don't.

21 Q. Do you have a recollection of  
22 whether he said to Captain Ober,  
23 Captain Ober, do you think I would be  
24 part of this thing?

25 A. Not that I recall.

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1 Q. Colonel Hickes, did Captain  
2 Ober ever indicate to you that he  
3 believed that Colonel Evanko was  
4 involved in this thing somehow?

5 A. No, he did not.

6 Q. Did Captain Ober approach this  
7 thing, to the best of your knowledge,  
8 at all times, as a consummate,  
9 professional, trying as best he could  
10 to show respect for an official  
11 investigation and the purposes of an  
12 official investigation?

13 A. In all his dealings with me I  
14 would say that that's a fair  
15 characterization, yes.

16 Q. All right. Now, there has  
17 been, as we move through this  
18 lawsuit, an implication made that  
19 Captain Ober misrepresented what the  
20 FBI may have said. Based upon your  
21 knowledge of the facts, what I  
22 struggle with and may question is, if  
23 Captain Ober had either misunderstood  
24 what the FBI said or wanted or even  
25 misstated the extent of their

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1 interest in confidentiality or  
2 misstated any expression in  
3 confidentiality, what possible  
4 difference, Colonel Hickes, would it  
5 have made?

6 A. I don't know that it would  
7 have made any difference or not.

8 Q. No, sir, because you, as a  
9 deputy commissioner and someone who  
10 I think is quite clear to me, at  
11 least, is an incredibly competent  
12 professional. And that's meant  
13 sincerely, not to blow smoke, because  
14 when you look at the facts in front  
15 of you, is it fair to say that given  
16 the focus, intent, purpose and what  
17 facts were known about the FBI  
18 investigation, that a command  
19 decision needed to be made on who to  
20 inform and that a decision was made  
21 by Captain Ober, apparently concurred  
22 in by you, in terms of reasoning now,  
23 I'm not talking about the words of an  
24 order, in terms of reasoning, that  
25 confidentiality was important to

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1 maintain investigation, integrity and  
2 it should not go beyond the FBI,  
3 until they say, or indicated, it's  
4 okay, no matter where it might go?

5 A. That would be a correct  
6 analysis of it, yes.

7 Q. All right, sir. Colonel  
8 Hickes, my understanding is that when  
9 Major Werts and Major Williams  
10 performed the investigation that was  
11 ordered by Colonel Evanko, that you  
12 were interviewed; am I correct, sir?

13 A. That's correct, sir.

14 Q. Were you read your rights?

15 A. I don't recall.

16 Q. Well, if you were read your  
17 rights, it's fair to say probably  
18 that any statement or tape recordings  
19 made would indicate that; is that  
20 correct?

21 A. Yes, that's correct.

22 Q. Do you have a recollection of  
23 ever listening to the tape recording  
24 of your interview?

25 A. I was given a video --- or an

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1 audio cassette in microcassette form.

2 I have never seen a transcript and I

3 have never listened to the audio.

4 Q. Were you ever indicated --- do  
5 you have any understanding of this  
6 investigation that was ordered into  
7 the events of the fall of 1998. Was  
8 that investigation into you?

9 A. I posed that question of Major  
10 Werts and Major Williams in advance  
11 of my interview and my recollection  
12 is their response was that their  
13 investigation was into the  
14 circumstances of the FBI  
15 investigation of this matter.

16 Q. So it could have been into  
17 you?

18 A. My understanding of what they  
19 said is that it was the FBI's  
20 investigation into this matter.

21 Q. So were they investigating  
22 what the FBI did?

23 A. Ostensively, yes,

24 Q. Well, let's go back to May  
25 12th, 1999. And Colonel Evanko made

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1 the statement, I'll have the agent  
2 transferred. Do you remember that?

3 A. Yes, I do.

4 Q. Now, do you know whether any  
5 requests was ever made of the FBI to  
6 transfer or punish the agent  
7 involved?

8 A. No, I don't.

9 Q. Why, if you know the answer to  
10 it, do you know why or did --- strike  
11 that.

12 Did Colonel Evanko ever  
13 indicate why he was so upset?

14 A. No, he did not.

15 Q. I mean --- do you know why he  
16 would be --- if there were some  
17 information out there that might  
18 indicate that he would be involved,  
19 do you know why he would be upset  
20 that someone didn't tell him that  
21 they were checking on the possibility  
22 of his being involved in something?

23 A. You've got me ---.

24 Q. Well, did Colonel Evanko ever  
25 indicate that, geez, I'm glad you

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1 didn't tell me, that way they know  
2 that, you know, I'm clean and not  
3 involved in such a thing?

4 A. No, he did not.

5 Q. I mean, did it ever occur to  
6 you at some point that maybe he  
7 should have been pleased but he  
8 wasn't informed and it was a clean  
9 investigation that was done without  
10 any interference or the appearance of  
11 interference?

12 A. That certainly would have been  
13 a possibility, yes.

14 Q. All right. Now, let me move  
15 to a different --- I'm going to shift  
16 gears on you, again. Okay. Let's  
17 move to the questions that Counsel  
18 --- that Ms. Guido asked about these  
19 folks over in the Governor's office.  
20 She went through so many doggone  
21 names, I'll be honest with you, I  
22 didn't get them all. But she had  
23 indicated that at some point, I think  
24 you had responded that at some point  
25 around the time that Captain ---

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1 strike that.

2           Colonel Evanko. That around  
3 the time that Colonel Evanko was  
4 informed by you and Captain Ober,  
5 that you may have had discussions  
6 with some folks in the Governor's  
7 office?

8 A.       Correct.

9 Q.       Do you know whether Colonel  
10 Evanko views you as some kind of  
11 political or career threat? I'm  
12 sorry to have to ask you these  
13 questions, but --- and you may not  
14 know the answers. Just answer me as  
15 succinctly as you can, please. Do  
16 you know whether he views you that  
17 way?

18 A.       Not that I'm aware of.

19 Q.       Is he afraid of you?

20 A.       Not that I'm aware of.

21 Q.       Who does he go over and talk  
22 to over in the Governor's office, if  
23 you know. Who is his contact?

24 A.       I don't know who all.

25 Certainly he talks to a lot of people

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1 in the Governor's office, you know.  
2 So there are a lot of people over  
3 there.

4 Q. That's part of his job; right?

5 A. Yes, it is.

6 Q. I mean, I would hope that as a  
7 Pennsylvania State Police  
8 commissioner, I would certainly  
9 applaud him in efforts to communicate  
10 with political leaders, because  
11 that's the way our system runs,  
12 civilian leadership; right?

13 A. Correct.

14 Q. All right. Now, do you know  
15 whether he ever went over there  
16 talking about Captain Ober and what  
17 Captain Ober did?

18 A. No, I don't.

19 Q. Do you know if he ever went  
20 over there talking about Colonel  
21 Hickes and what Colonel Hickes did?

22 A. No, I don't.

23 Q. Do you know whether Captain  
24 Ober was ever read his rights on this  
25 thing, you know, his whatever they're

1       called?

2       A.       I don't know.

3       Q.       All right. I'm going to  
4       change gears on you again just a  
5       little bit. Okay. During  
6       conversation --- during your  
7       responses to Ms. Guido's questions,  
8       you had, don't worry about time,  
9       we'll get you out of here, you had  
10      used the term, I noticed, chain of  
11      command; do you remember that?

12      A.       Yes, I do.

13      Q.       And I think you had alluded to  
14      or I think the response was in the  
15      nature of --- well, you know, you  
16      were not in Captain Ober's chain of  
17      command; do you remember that?

18      A.       Yes.

19      Q.       Okay. Now, given all of the  
20      facts and circumstances, based on  
21      what I know about this, I can't  
22      understand why that's even an issue.  
23      Can you tell me why that would be an  
24      issue? And maybe I can lay a  
25      foundation this way just a little bit

1 better. Well, you go ahead and  
2 respond, I'm sorry, before I change  
3 the question. I'm sorry.

4 A. The circumstances as I  
5 understood them to be at the time, in  
6 my mind, gave Captain Ober the  
7 ability to circumvent the chain of  
8 command because of the limited  
9 information presented to me and, I  
10 believe, presented to him at the  
11 time. Therefore, I don't see a chain  
12 of command being an important issue.  
13 But others may and they may be able  
14 to articulate why it is, I don't  
15 know.

16 Q. Okay. The fact is that the  
17 information available at the time  
18 indicated that chain of command  
19 adhering to, and at least in terms of  
20 reporting, let alone the obviously  
21 implications you've already testified  
22 to about confidentiality, did not,  
23 for any apparent reason, demand that  
24 we adhere to and report to some chain  
25 of command; is that fair to say?

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1 A. I'm not sure what you're  
2 asking, again.

3 Q. Awkward question. Let me  
4 withdraw it. I'm not so sure what it  
5 was asking either.

6 ATTORNEY BAILEY:

7 We're going to have to  
8 change tapes here in just one  
9 second, so I'm going to let  
10 these gentlemen here --- do  
11 you want to just change right  
12 now maybe and that will give  
13 --- okay. We're going to shut  
14 this down for just a second.  
15 Please, let's not go anywhere.

16 VIDEOGRAPHER:

17 11:39 a.m., off record.

18 OFF VIDEO

19 SHORT BREAK TAKEN

20 VIDEOGRAPHER:

21 11:40 a.m., back on the  
22 record.

23 ON VIDEO

24 BY ATTORNEY BAILEY:

25 Q. All right, sir. We've just

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1 changed tapes. I have a few  
2 questions, just very few brief  
3 questions about this chain of command  
4 thing. Okay. One of the issues  
5 that's arisen in this case are some  
6 very, very serious questions about  
7 when changes in the PSP regulation  
8 AR-1 may have taken place. Now, as a  
9 foundation question for some  
10 questions that I have about that  
11 chain, when those things took place,  
12 who did them and what they did, I'd  
13 like to go back to some questions  
14 that Ms. Guido was asking you about  
15 your job, what you do. Now, I want  
16 to take you --- go back in your  
17 mind's eye to December 2000, January  
18 of 2001, February 2001, what were you  
19 doing at that time?

20 A. I was the deputy commissioner  
21 of staff of the State Police.

22 Q. Well, give me just --- put a  
23 little meat on those bones for me,  
24 Colonel. Generally speaking, the  
25 December timeframe of the year is a

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1 little bit slow in the staff function  
2 of law enforcement and generally I  
3 take a week's vacation around the  
4 holidays, but when I come back for  
5 the January, February time frame you  
6 have to get prepared for budget  
7 hearings. And budget hearings  
8 annually are the February, March  
9 timeframe for both the House and the  
10 Senate. And a large portion of the  
11 budget hearings is budget prep  
12 particularly in my shop because it  
13 does involve the budget, as well as  
14 the large expenditures of technology.  
15 So without looking at my calendar, I  
16 would speculate that I was involved  
17 in that.

18 Q. All right. Now, you're  
19 familiar with AR-1 at least  
20 generally?

21 A. My recollection is AR-1 is the  
22 table of organization of the  
23 department.

24 Q. Yes. And I don't think Albert  
25 Einstein could repeat everything

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1 that's in it. It's a rather  
2 voluminous kind of thing; right?

3 A. Correct.

4 Q. Now, does anyone ever come to  
5 you at different times about proposed  
6 changes in PSP regulations?

7 A. I'm not sure what you mean.

8 Q. Okay. Do you ever receive  
9 notifications or information in  
10 through your official channels or  
11 whatnot about proposed changes, you  
12 know, either asking your advice or  
13 soliciting an opinion or a view that  
14 maybe you on your own have made  
15 recommendations on how regulations  
16 can or should be changed?

17 A. Not that I recall. If I have,  
18 it would have been rare. I do see  
19 the changes when they are finished by  
20 the Bureau of Research and  
21 Development and their being submitted  
22 through for approval. So changes or  
23 proposed changes would cross my desk  
24 and I have the opportunity to make  
25 comment on them at that time if I see

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1 an issue with it.

2 Q. Well, let's talk about that.

3 I want to ask a few questions about  
4 this in AR-1.102, Subsection C. Did  
5 I state it correctly, sir, Subsection  
6 C? Are you familiar with that?

7 A. No, I'm not.

8 Q. Well, Subsection C has to do  
9 with the chain of command. Now, if  
10 there was a major change in  
11 definition or the responsibility each  
12 member would have for the chain of  
13 command and that were going through a  
14 review and change process, would you  
15 like to think that you'd be asked for  
16 an opinion or an opportunity to  
17 review it?

18 A. Again, I would need more  
19 information. The process doesn't  
20 always work that everyone gets an  
21 opportunity to comment beforehand,  
22 but I should be able to see the  
23 change as it comes through for  
24 approval.

25 Q. Well, let me ask about that,

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1 because, again, I haven't walked in  
2 your shoes, so I don't know what it's  
3 like to be where you are, make the  
4 decisions that you make and process  
5 the information that you have to  
6 process to do your job. Are you  
7 saying that if I, as a --- let's say  
8 I'm the research and development  
9 folks there and I've got somebody ---  
10 you know, Captain Ober comes to me  
11 and he says, we need to change this  
12 doggone section here or we need to  
13 add a section on the chain of  
14 command. You know, we have too many  
15 cases with these folks out there  
16 circumventing the chain of command.  
17 And we've got to put something in  
18 here to make sure they follow the  
19 straight and narrow.

20 All right. You know,  
21 obviously, I'm sort of, you know,  
22 embellishing that and whatnot. But it  
23 seems to me that you've indicated  
24 that if there were a significant  
25 change in a regulation, at least the

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1 proposal process, the proposed change  
2 process, would likely come to you?

3 I'm not saying it has to, but it  
4 would likely come to you?

5 A. The proposed change, when it's  
6 approved and done in final form, or  
7 what the Bureau of Research and  
8 Development believes is final form,  
9 the final form has to go through the  
10 signature process. And generally,  
11 the deputies would sign off on that,  
12 that they read it, they understand  
13 it, they generally approve it.

14 Q. And Subsection C didn't come  
15 to you; did it?

16 A. These come to me all the time.  
17 I don't have any specific  
18 recollection of that.

19 Q. And in fairness you may not  
20 have this; is that right?

21 A. Well, I don't know. I don't  
22 know whether it came to me or not is  
23 the point. You know, typically they  
24 do come to me and I would have to  
25 assume that it did, but, you know, I

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1       would need to review. I would  
2 initial off on that, if it had.

3       Q.       Well, if you didn't initial  
4 off on it, then obviously that means  
5 it didn't come to you; right?

6       A.       If I didn't initial off, it  
7 means that I did not see it. I, on  
8 occasion, have people sitting in my  
9 capacity acting in my stead. There's  
10 the possibility that it came to one  
11 of them. I don't know.

12      Q.       Okay. What's a historic file?  
13 What's that?

14      A.       I believe that that's the file  
15 that the Bureau of Research and  
16 Development keeps on the directives  
17 within the Pennsylvania State Police.

18      Q.       Is it supposed to contain  
19 information about the process of  
20 changing a regulation, like what  
21 suggestive changes there were, who  
22 saw that, who contributed to it,  
23 where it went here, where it went  
24 there?

25      A.       Candidly, I have no idea what

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1 all was in it, in a historic file. I  
2 don't know what all information is  
3 there.

4 Q. Okay. But you don't have any  
5 --- you're a deputy commissioner and  
6 as you sit here today you don't have  
7 a recollection off the top of your  
8 head, not to say it didn't happen,  
9 but you don't have a recollection as  
10 you sit here today about a change in  
11 AR-1, specifically adding a section  
12 that purports to address a definition  
13 and the responsibilities of chain of  
14 command?

15 A. No, I don't have a  
16 recollection of it.

17 Q. Have you ever looked in a  
18 historic file?

19 A. No, I have not.

20 Q. A few things on IIMS. You  
21 know, I've gotten a hold of some  
22 documents that indicate to me that  
23 Captain Ober was on some sort of  
24 voting committee, now I'm not  
25 familiar with how you folks do things

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1 here in the Pennsylvania State  
2 Police, so bear with me because some  
3 of my questions may not be the most  
4 well informed and I don't have the  
5 advantages that your attorneys do  
6 with access to the kind of  
7 information they have, but my  
8 questions are sort of dumb. In  
9 common terms, bear with me.

10                   Was Captain Ober involved in  
11 the procurement process?

12 A.               Yes, he was.

13 Q.               Now, in a procurement process,  
14 in most contract acquisition systems  
15 that I'm familiar with, US military  
16 and things I've done in a former  
17 life, you have to gather as much  
18 information as you can and you go  
19 through a lot of different evaluation  
20 process before you make a decision  
21 on, number one, whether you're going  
22 to do this thing. That would be  
23 first; right? I mean, you evaluate  
24 it and see if I'm going to use it, if  
25 it can do the job for me.

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1 A. Yes. Generally speaking, that  
2 would all be included in the  
3 evaluation process.

4 Q. Okay. And then you make some  
5 kind of a decision, I guess, and  
6 start finding out, you know, who can  
7 do it because you want to find out  
8 what it's going to cost and what goes  
9 into doing it; is that correct?

10 A. Yes, it is.

11 Q. Now, I understand that Captain  
12 Ober played a rather central role in  
13 some of those decisions in terms of  
14 bringing people together, bringing  
15 information together and making  
16 decisions that ensured that this  
17 evaluation process was done  
18 correctly; am I correct?

19 A. Yes, you are.

20 Q. Why was he taken out of that?

21 A. To the best of my  
22 recollection, the acquisition process  
23 had concluded and we were moving to  
24 the contracting process. In other  
25 words, they had selected the

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1 appropriate vendor and that part of  
2 the project was finished.

3 Q. Okay. And what parts of the  
4 process was he working on?

5 A. He had worked as the team  
6 leader for the request for qualified  
7 contractor to evaluate proposals and  
8 score those proposals and make a  
9 recommendation of who the successful  
10 bidder should be.

11 Q. Well, what's the voting  
12 committee? What's that do?

13 A. Well, that's the portion of  
14 the team that has a role of scoring  
15 the proposals and then rendering the  
16 vote on the best solution or the best  
17 company that has made their proposal.

18 Q. Well, in order to contribute  
19 to or make that decision, you have to  
20 have a comprehensive grasp of the  
21 technology, it's capability and its  
22 costs; don't you? I mean, how do you  
23 do that if you don't have that  
24 information? Let me read something  
25 to you.

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1 A. All right.

2 Q. Voting committee is  
3 responsible for evaluating the RFQC  
4 draft and vendor proposals. The  
5 voting committee will make  
6 recommendations in the form of an  
7 executive summary to the executive  
8 oversight committee. Could you  
9 expound on that for me, please?

10 A. The executive oversight  
11 committee is a group of top level  
12 executives from various elements of  
13 state government who acted as an  
14 oversight to the IIMS procurement.  
15 The voting committee was responsible  
16 for evaluating and scoring the  
17 various proposals that were submitted  
18 and then making a recommendation to  
19 the executive oversight committee,  
20 concerning which vendor they believe  
21 would do the best job for the  
22 Commonwealth.

23 Q. Do you know when the review of  
24 QC proposals, when that began or when  
25 that was ---?

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1 A. That would have been the fall  
2 and into winter of 1999. I don't  
3 have the exact dates.

4 Q. And if I told you that you  
5 might be into a process that took  
6 place in January and February of  
7 2000, would that make sense to you or  
8 would you have some reason to think  
9 that might not be correct?

10 A. I think that the process went  
11 into January. I believe Captain Ober  
12 was transferred out of the team in  
13 January. I'm not certain of that, so  
14 I would think that it might have gone  
15 into January.

16 Q. I'm not trying to be  
17 argumentative, and I apologize to you  
18 if I sound that way, but I think your  
19 testimony in response to one of my  
20 questions is that that process was  
21 over, at least I may have misheard  
22 you.

23 A. That's my point.

24 Q. Could you be in error or was  
25 he still working on that proposal

1 process, where my research indicates  
2 he was?

3 A. I believe the RFQ portion had  
4 been done and they were moving into  
5 the contracting phase, I believe.

6 Q. And that, sir, you're actually  
7 providing information to make a  
8 decision on how to spend all of that  
9 money; isn't it? Isn't that what  
10 it's about?

11 A. Pardon me?

12 Q. In February, they were going  
13 to be making or trying to make some  
14 decisions about how you're going to  
15 spend all that money, who are you  
16 going to spend all that money with,  
17 at least begin that process of  
18 evaluation.

19 A. The February time frame, if my  
20 recollection is correct, is when you  
21 would sit down with the vendor that  
22 would get the award and negotiate the  
23 nuts and bolts of exactly what it is  
24 that you're going to be getting for  
25 the money that you're spending.

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1 Q. And you folks are going to go  
2 out and spend it for all taxpayers,  
3 over \$130 million; is that what you  
4 testified to?

5 A. I testified that I believe the  
6 final cost has not be submitted yet  
7 by Lockheed Martin for Phase II and  
8 my expectation is that it would be  
9 \$120 to \$130 million.

10 Q. Remember what Dirkson  
11 (phonetic) said, a billion here, a  
12 billion there, then we start talking  
13 about real money. State governments,  
14 that's a sizeable piece of money,  
15 though; isn't it, sir?

16 A. Yes, it is.

17 Q. All right. Say, Colonel  
18 Hickes, how many years you been with  
19 the Pennsylvania State Police?

20 A. Twenty-nine (29).

21 Q. A lot of experience. You've  
22 seen a lot of times when captains  
23 were put into lieutenant's positions;  
24 haven't you?

25 A. The only one I can recall was

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1 Captain Ober.

2 Q. In 29 years, Colonel Hickes,  
3 the only captain you know that was  
4 assigned to a lieutenant's position  
5 was Captain Darrell G. Ober; am I  
6 correct?

7 A. To the best of my knowledge,  
8 yes.

9 Q. So you served as either  
10 director in an IAD or BPR; haven't  
11 you?

12 A. Yes, I have.

13 Q. I know Colonel Evanko has;  
14 hasn't he?

15 A. Yes, he has.

16 Q. Captain Ober has, I know, been  
17 acting director of BPR, but he's been  
18 director of IAD?

19 A. Yes.

20 Q. Sir, is it fair to say in the  
21 Pennsylvania State Police that the  
22 people that rise to the top career  
23 wise, I'm not saying it's iron clad,  
24 but typically at least have some  
25 exposure, some experience with BPR in

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1 one of its two divisions is more  
2 common than not, if you know?

3 A. I think your characterization  
4 is that it has occurred on a number  
5 of occasions. I don't know if  
6 whether that's because going through  
7 BPR is a track that would make you  
8 more attractive for promotion higher  
9 or that we tend to put quality people  
10 in BPR, but it's not an iron clad and  
11 there are people that have been  
12 elevated higher that have never gone  
13 to BPR.

14 Q. Well, you know, FBI Agent  
15 Kush, now I'm not saying that all the  
16 folks in the Pennsylvania State  
17 Police have a high opinion to the  
18 FBI, but FBI Agent Kush, when I  
19 questioned him about why after they  
20 had gone to Western IAD and the  
21 western organized crime division or  
22 group, I don't know quite how they're  
23 structured, but why they went up to  
24 Harrisburg and made a decision to go  
25 to Harrisburg and Captain Ober, head

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1 of IAD at that time, said that  
2 because IAD is a cut above. Those  
3 are his words, cut above. Do you  
4 expect a higher standard of  
5 performance of professional  
6 responsibility from somebody. You  
7 know, I don't know if Mr. Kush, if  
8 that's something that's expected in  
9 the State Police, but he said that  
10 was one of their reasons, because you  
11 expect them to be a cut above.

12 A. I think that all of the  
13 Pennsylvania State Police has a  
14 standard which we expect officers to  
15 adhere to. I believe that in  
16 Internal Affairs your privilege to  
17 work there is scrutinized more  
18 severely than your privilege to work  
19 at other places in the Department,  
20 depending upon the integrity issue.

21 Q. And is that because the very,  
22 very core issue, the integrity of the  
23 organization itself, it's ability to  
24 cleanse itself, to look at itself, to  
25 look at itself, to improve itself, to

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1       be honest with itself, is at issue in  
2 internal affairs investigation?

3       A.      I believe that that would be a  
4 correct assessment, yes.

5       Q.      Okay. You were asked  
6 questions about this thing with  
7 Indiana. What's wrong with meeting,  
8 for the sake of convenience,  
9 somewhere between Harrisburg and  
10 Pittsburgh, meeting in a hotel in  
11 Indiana in an investigation of this  
12 type? Forgive me, but I don't  
13 understand what's wrong with that.

14       A.      When Captain Ober requested  
15 the authorization to go to Western  
16 Pennsylvania using his own car and on  
17 his own time, so to speak, putting in  
18 a leave slip, I questioned him about,  
19 did he really feel he needed to do  
20 that that, you know, was he that  
21 concerned that he had to do that.  
22 And expressed that he was. He felt  
23 that if he made it a work day and  
24 simply went out, that it would raise  
25 questions ---.

1 Q. Okay. You said that he  
2 expressed concern about it being a  
3 work day.

4 A. That it would raise questions  
5 in the office that he didn't really  
6 want to have to explain. Based upon  
7 his concern and his explanation, I  
8 saw no problem authorizing that he do  
9 what he wanted to do. After all,  
10 he's the investigator. He's the  
11 individual who's working this and has  
12 the information. And if that's his  
13 best estimate of what he should do,  
14 then I authorized it.

15 Q. And if you got to the hotel  
16 and you ordered a cup of coffee,  
17 which is my understanding of what the  
18 FBI ordered, beverages, Colonel Conly  
19 testified he seemed to be very, very  
20 concerned there were beverages  
21 ordered for the FBI. I asked Agent  
22 Kush. It turned out that his  
23 recollection was it was a cup of  
24 coffee. So they didn't get all  
25 liquored up, but, you know, is there

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1 something wrong with ordering a cup  
2 of coffee for a couple of FBI agents  
3 when they're doing an investigation  
4 on something that has to ---  
5 something of public concern. What is  
6 the problem with that?

7 A. None that I know of.

8 Q. Sir, do you have a  
9 recollection of what the end result  
10 of Captain Ober's efforts by a  
11 grievance process to be reimbursed  
12 would happen there, if you know?

13 A. I believe he prevailed in  
14 getting reimbursement, but I'm not  
15 certain.

16 Q. All right, sir. Thank you.  
17 Now, you have been asked --- Ms.  
18 Guido had asked you questions about a  
19 --- strike that. Correct me.

20 Ms. Guido asked you questions  
21 about a May 13 meeting, 1999 meeting,  
22 with Barbara Christie; do you  
23 remember that?

24 A. Yes, I do.

25 Q. Why did you go over to see

1       Barbara Christie?

2       A.       As I said, I think that I  
3       explained that --- the Commissioner's  
4       reaction to being informed about the  
5       investigation and the totality of the  
6       circumstances. I sought out Ms.  
7       Christie to kind of find out whether  
8       in her perspective we had used good  
9       judgment and as much as anything  
10      else, to advise her of what had  
11      transpired.

12      Q.       Colonel Hickes, you're  
13      probably a man of uncommon courage.  
14      And I don't mean to embarrass you  
15      with this question. The truth of the  
16      fact is, the Commissioner reacted so  
17      strongly it scared you a little;  
18      didn't it?

19      A.       A little bit, yes.

20      Q.       All right. So you go to the  
21      Department legal people on the 13th  
22      and get her advice, interesting  
23      waiver of privilege issue here by the  
24      way, and you ask Barbara Christie, in  
25      effect, did I do something that would

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1 subject me to discipline or break the  
2 law; is that basically it?

3 A. I don't think discipline was  
4 an issue with my position, but I did  
5 want to run the circumstances past  
6 her and get her take on them.

7 Q. Well, do you know what  
8 obstruction of justice is?

9 A. Yes, I do.

10 Q. Now, what if you'd run up to  
11 Captain --- I'm sorry, excuse me.  
12 Colonel Evanko and told him about  
13 this investigation and he had called  
14 the governor's office and somebody  
15 over there calls Joe Preston or Lenny  
16 Bodack, because, in fact, this  
17 terrible thing had some truth to it.  
18 Do you think a little federal grand  
19 jury out there could have indicted  
20 you, sir?

21 A. I don't know and I obviously  
22 am not a lawyer, but I would say that  
23 it's a possibility.

24 Q. And did you talk with Barbara  
25 about the legal ramifications of what

1 you had done or not done, your acts  
2 or remissions?

3 A. Yes, I did.

4 Q. And what did she say?

5 A. She said that based upon the  
6 circumstances as I presented them to  
7 her, that it appeared that I was  
8 reasonable in my judgment.

9 Q. Do you know whether an  
10 admission of counsel is an admission  
11 of a party; do you know?

12 A. I don't know.

13 Q. You don't know that. Sir, in  
14 response to one of Syndi Guido's  
15 other comments, you had indicated  
16 that after you had talked to Colonel  
17 Evanko, that you had --- that Colonel  
18 Evanko called Colonel Coury into the  
19 room; am I correct?

20 A. Yes.

21 Q. Now, sir, am I correct that  
22 you had also indicated that Captain  
23 Ober was in the room at the same time  
24 or did I miss something?

25 A. I believe he was, yes.

1 Q. You know, I'm going to ask ---  
2 it's very important. What was the  
3 conversation then after Colonel Coury  
4 entered the room? Try to, you know,  
5 take a second or two and think back  
6 and tell us everything you can  
7 recollect about what was said. Let  
8 me tell you what I'm looking for.  
9 I'm looking for whether there was any  
10 discussion of investigations, any  
11 discussion of actions that the  
12 colonel was going to take. I'm going  
13 to assume that this was after he made  
14 the initial comments about Louie  
15 Freeh and removing the agent or  
16 whatever the heck he said. But, you  
17 know, could you, please --- after  
18 Colonel Coury came into the room,  
19 what went on?

20 A. I have very little  
21 recollection of the conversation. My  
22 recollection is that the Commissioner  
23 wanted Captain Ober and I to explain  
24 the circumstances to Colonel Conly  
25 and advise him ---.

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1 Q. C only?

2 A. I'm sorry. I apologize,  
3 Colonel Coury.

4 Q. Okay.

5 A. And we did that, but as far as  
6 any specific dialogue following that,  
7 I don't have any recollection. I  
8 don't know that he did as you're  
9 suggesting.

10 Q. Okay. I think we had some  
11 testimony from Mr. Coury that at some  
12 point he had done a statement or  
13 something for Mr. Evanko about what  
14 occurred during a conversation where  
15 you were present. I must represent  
16 to you, sir, I honestly don't  
17 remember whether it indicated Captain  
18 Ober being there or not. I'm just  
19 not sure. My question is, did  
20 Colonel Coury ever show you a  
21 statement or tell you about a  
22 statement that Colonel Evanko had  
23 asked him to provide about what  
24 occurred during a conversation with  
25 you?

1 A. No.

2 Q. So as you sit here today, you  
3 don't know --- you did not know until  
4 today, I assume, that allegedly Mr.  
5 Evanko had asked Mr. Coury to do a  
6 memo about the conversation that  
7 occurred on or about the 12th or  
8 13th, whenever it was?

9 A. Correct.

10 Q. When Mr. Williams and Mr.  
11 Werts came to you and inquired of you  
12 about this so-called --- this  
13 investigation or whatever, you know,  
14 we think it was an investigation,  
15 they want to call it an inquiry, the  
16 point is that, did they indicate that  
17 they had a statement from Colonel  
18 Coury about the events of that day?

19 A. No.

20 Q. Did they show you any  
21 statements or read them to you?

22 A. No.

23 Q. Do you know who made the  
24 decision to appoint --- strike that.

25 Do you know who made the

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1 decision to select Werts and Williams  
2 for this job?

3 A. Not for certain. On the 13th  
4 with Lieutenant Colonel Coury and  
5 Westcott, the Commissioner and  
6 myself, there was a discussion about  
7 a need to do an investigation and who  
8 our likely investigators or  
9 investigator was, because I was so  
10 deeply involved in the issue that  
11 they were going to investigate, I did  
12 not contribute to that discussion,  
13 although I was present. My  
14 recollection is that there was no  
15 resolution at that time. And  
16 although the names were Williams  
17 and/or Werts were brought up, I don't  
18 recall that they made a decision then  
19 and there to make an assignment then.

20 Q. Have you ever known a deputy  
21 commissioner to jump in an airplane  
22 and fly off to tell a major to go  
23 investigate something?

24 A. No.

25 Q. Do you have a recollection

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1 during any of the conversations to  
2 which you were privy of anyone saying  
3 to Colonel Evanko, Colonel, you  
4 shouldn't do that or you don't have  
5 the authority to do that?

6 A. I didn't question the  
7 Commissioner's authority. He  
8 certainly is the commissioner of the  
9 state police, he can do what he's  
10 like to do, but I did question the  
11 value of the investigation as it  
12 relates to, if he needed information  
13 I was available to provide him what I  
14 knew, but only in the context of  
15 that. I really didn't participate  
16 much.

17 Q. Well, the commissioner of the  
18 Pennsylvania State Police, if he  
19 wants to, can he call a trooper up  
20 and tell him to go search your house?

21 A. No, he cannot.

22 Q. If he wanted to, could he go  
23 outside and get on the telephone and  
24 tell a couple of troopers to come in  
25 here and escort you out and start

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1 questioning you about something or  
2 ---? Can he do that? If you know.  
3 You may not know.

4 A. Within his authority to  
5 determine the circumstances  
6 surrounding a legitimate State Police  
7 process, I think that he does have  
8 broad authority to conduct inquiries.

9 Q. Okay. Now, Werts, you know,  
10 we know in this case of Werts and  
11 Williams came in and questioned  
12 Captain Ober during this inquiry;  
13 right? Well, I can tell you that  
14 they did and they read him his  
15 rights. Do you have any knowledge or  
16 any facts known to you about who made  
17 the decision to read Captain Ober his  
18 rights?

19 A. No, I don't.

20 Q. Do you know where the  
21 questioning of Captain Ober took  
22 place?

23 A. No, I don't.

24 Q. What's a supervisory inquiry,  
25 what's that, as opposed to a full

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1 investigation, if you know?

2 A. A full investigation would be  
3 an investigation that the Bureau of  
4 Professional Responsibility would  
5 enter into or would have your  
6 professional responsibility index  
7 number that would determine all the  
8 facts. Supervisory, I would have to  
9 look at the definition. I can't  
10 distinguish. I can't tell you what  
11 it is right now.

12 Q. Well, you're not suggesting to  
13 us that the commissioner's power to  
14 go do all of these investigations can  
15 be done off the books; are you?

16 A. No. I would suggest that it  
17 should have had some reference number  
18 somewhere along the line.

19 Q. Right. Well, do you know when  
20 the inquiry into the facts and  
21 circumstances of October 1998 or the  
22 FBI or whatever, whoever investigated  
23 this creature, do you know whether it  
24 was ever signed a BPR number?

25 A. I don't know.

1 Q. Do you have recollection of  
2 ever seeing one?

3 A. I would not, no.

4 Q. Well, how many investigations,  
5 like the one that Werts and Williams  
6 did then have you seen in your 29  
7 years? You must have seen a lot of  
8 them; haven't you?

9 A. I've seen a few. I can't say  
10 that I've seen a lot.

11 Q. Would you say they constitute  
12 a practice in the Pennsylvania State  
13 Police?

14 A. No, I wouldn't characterize  
15 them that way.

16 Q. The fact is, the way you're  
17 trained most of the things you do are  
18 accounted for by number and  
19 memorandum and forms and they are  
20 structured and they're done according  
21 to regulation; am I correct?

22 A. Yes.

23 Q. Well, tell me the regulations  
24 that govern the investigation, which  
25 lead to Captain Ober at least I know

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1 being read his rights? Do you know  
2 what the regulations are that  
3 governed that?

4 A. I'm not familiar enough with  
5 exactly what directions they were  
6 given to know, but no.

7 Q. Okay. But your belief is as a  
8 deputy commissioner that the  
9 commissioner would have broad powers  
10 to investigate things anyway as a  
11 part of his job and his role as a  
12 commissioner. Certainly that would  
13 make commonsense; right?

14 A. Yes. Any chance we could take  
15 a five-minute break, Mr. Bailey?

16 ATTORNEY BAILEY:

17 Yes. Okay. That's all  
18 right. You know what, I don't  
19 think I'm going to be five  
20 more minutes. I'll tell you  
21 what, if I tell you --- I  
22 don't know if the other side  
23 has questions, so in fairness  
24 maybe we better break.

25 ATTORNEY GUIDO:

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1                   Well, I'll have five or  
2                   ten minutes, so if you want to  
3                   take a five-minute break ---.

4 A.               I just want to use ---.

5                   ATTORNEY GUIDO:

6                   I need it, too.

7 A.               Can we just use the restroom.

8                   ATTORNEY GUIDO:

9                   Yes, sir. Let him ---  
10                  he has to take us off record.  
11                  Just a second.

12 A.               Okay.

13                   VIDEOGRAPHER:

14                  12:14, off record.

15 OFF VIDEO

16 SHORT BREAK TAKEN

17                   ATTORNEY BAILEY:

18                  The record device is  
19                  operating.

20                   VIDEOGRAPHER:

21                  12:19 p.m., tape two,  
22                  back on the record.

23 ON VIDEO

24                   ATTORNEY BAILEY:

25                  Okay. I think, you

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1 know, by and large I'm  
2 probably finished. I had a  
3 few little follow-up  
4 questions. Maybe, Syndi, if  
5 you want to finish up now, I  
6 may even dispense with those  
7 based on the interview that  
8 you did with Majors Werts and  
9 Williams. It was both of  
10 them; is that correct?

11 A. That's correct.

12 ATTORNEY BAILEY:

13 That's it for right  
14 now. Let me just run over  
15 this very quickly. I don't  
16 think I'm going to have  
17 anymore. Do you want to go  
18 ahead, Syndi?

19 ATTORNEY GUIDO:

20 Okay.

21 RE - EXAMINATION

22 BY ATTORNEY GUIDO:

23 Q. Mr. Bailey, was asking you  
24 about the change to AR1-1 and whether  
25 you had signed off on the routing

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1       slip, that kind of thing. I'd like  
2       you to think back to a year ago. Do  
3       you remember Captain Brown providing  
4       you with a copy of the routing slip  
5       and the change sheet and the  
6       regulation AR1-1 for your review?

7       A.       I was interviewed by Captain  
8       Brown relative to the matter. I  
9       don't have specific recollection of  
10      that.

11      Q.       You don't remember if he  
12      showed you a copy of the change  
13      sheet?

14      A.       He did, I believe, but I don't  
15      recall --- nothing stands out in my  
16      mind about it.

17      Q.       So as of the date of that  
18      interview, though, the change sheet  
19      did exist already?

20      A.       I don't recall. He showed me  
21      something. I can't say specifically  
22      what it was.

23      Q.       Okay. And if your initials  
24      are on the routing sheet with a date,  
25      what would that mean?

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1 A. Well, that means that's the  
2 date I reviewed and signed off it.

3 Q. But the change that we've been  
4 talking about and Mr. Bailey had  
5 asked you something about significant  
6 changes, there was nothing so  
7 significant to the change that we're  
8 discussing that it sticks out in your  
9 mind today?

10 A. No, there's nothing. It  
11 doesn't stick out in my mind today.  
12 And as I said, as it comes through me  
13 for approval, if there something that  
14 I would look at and say, well, wait a  
15 minute, you know, what's this all  
16 about, I have the opportunity at that  
17 point to question, either through  
18 Major Merryman, who's the Director of  
19 the Bureau of Research and  
20 Development, where did this thing  
21 come from and I don't recall doing  
22 that.

23 Q. And then with respect to  
24 Captain Ober's request to be  
25 considered for the legislative

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1 liaison position, there was one part  
2 about your answer that I was unclear  
3 about as I thought about it, and I  
4 just wanted to clarify. You said you  
5 passed that on, I guess, to  
6 Commissioner Evanko?

7 A. Yes.

8 Q. Do you remember, I guess from  
9 the logistical, physical perspective  
10 how that occurred, whether you spoke  
11 to Commissioner Evanko, you put it in  
12 his inbox, you put it in interoffice  
13 mail?

14 A. I don't recall.

15 Q. Do you remember ever talking  
16 to Colonel Evanko about it?

17 A. No, I don't recall.

18 Q. Now, when the --- when Captain  
19 Ober came to you and talked to you  
20 about the FBI's investigation when  
21 you just became a lieutenant colonel,  
22 did you have any reason to believe  
23 that Major Conly, the new Director of  
24 the Bureau of Professional  
25 Responsibility, would be a target of

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1 the FBI investigation?

2 A. The information at the time  
3 was so sketchy as to not really have  
4 any idea of what the FBI was  
5 investigating or that there was any  
6 target, if you will, of that. So  
7 I've got to answer almost the neutral  
8 in that. There was no target or not  
9 target.

10 Q. Did Captain Ober happen to  
11 mention to you that Lieutenant ---  
12 now Lieutenant Colonel Conly, but  
13 then Major Conly, when you became  
14 director of the Bureau, had already,  
15 before Captain Ober came to talk to  
16 you about this, had already contacted  
17 Captain Ober as director of the IAP  
18 and asked him whether there was  
19 anything significant that the should  
20 know about?

21 A. Not that I recall.

22 Q. And as the director ---.

23 ATTORNEY BAILEY:

24 I want to place a very  
25 strong objection on the

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1 record. I don't know if I  
2 understood what the witness  
3 has said, but I do not have a  
4 recollection of that  
5 characterization at all. I  
6 could be mistaken, but I'd  
7 place an objection.

8 ATTORNEY GUIDO:

9 Okay.

10 BY ATTORNEY GUIDO:

11 Q. Now, I've got sidetracked.  
12 All right. As Director of the Bureau  
13 of Professional Responsibility, it  
14 wouldn't be unreasonable for Major  
15 Conly to want to know about something  
16 like this; would it?

17 A. No, it would not be  
18 unreasonable for him to want to know  
19 about something about this.

20 Q. And did you know that one of  
21 the main reasons that the FBI  
22 contacted Captain Ober, in addition  
23 to needing some logistical  
24 information about the process, but  
25 that one of the main reasons they

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1 contacted him is because they felt  
2 that Pennsylvania State Police's  
3 Bureau of Professional Responsibility  
4 should know that there were members  
5 of the State Police that were  
6 possibly involved in this kind of  
7 corruption; did you know that?

8 A. I'm not sure what you're  
9 asking. My assumption would be that  
10 that's why they contacted Captain  
11 Ober, to let someone in the State  
12 Police know about this. I did not  
13 know that they --- if it was their  
14 intent, that more people would be  
15 made known of this.

16 Q. Okay. I guess where I was  
17 going with it, previously when I was  
18 asking the questions you said that it  
19 was your understanding that the  
20 reason that Captain Ober was  
21 contacted was so that they could find  
22 --- get some investigative help and  
23 find out how the process of getting  
24 into the academy works. So what I  
25 was asking you is whether you knew

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1       that in addition to that one of their  
2 primary reason really was to make  
3 sure that the Bureau of Professional  
4 Responsibility knew --- if they had  
5 this information they could  
6 investigate if they saw fit.

7    ATTORNEY BAILEY:

8    I strongly object,  
9    Counsel, to what you're doing  
10    in characterizing testimony.  
11    You can ask a direct question,  
12    if he knew something. What  
13    you're doing is presenting him  
14    with a fact scenario and  
15    implying to him that the FBI  
16    had this reason and I don't  
17    believe that that's correct.  
18    And I disagree with the  
19    characterization and strongly  
20    object to the form of the  
21    question. In fact, it's not  
22    even a question.

23    ATTORNEY GUIDO:

24    The FBI testimony  
25    speaks for itself and I have

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1           been patient while you've done  
2           very, very similar  
3           questioning, so ---.

4           ATTORNEY BAILEY:

5           I was delighted with  
6           the FBI testimony. I'm just  
7           asking, and absolutely  
8           delighted with it, but I'm  
9           just asking if a direct  
10          question can be asked, that's  
11          all.

12          ATTORNEY GUIDO:

13          I think I did ask a  
14          direct question.

15          BY ATTORNEY GUIDO:

16          Q.        My question is, did you know  
17          --- I was trying to clarify because  
18          earlier today you had said that you  
19          thought the reason they contacted you  
20          was for information on the process.  
21          And I'm asking you, did you know that  
22          their primary motivation was because  
23          they wanted to make sure somebody was  
24          --- the Bureau of Professional  
25          Responsibility, they kept calling it

1 OPR, but they mean --- it could have  
2 went to BPR and knew about it.

3 ATTORNEY BAILEY:

4 Repeat my objection.

5 You may respond.

6 A. My information is that they  
7 contacted the Bureau of Professional  
8 Responsibility so that someone in the  
9 State Police would know I was aware  
10 of that. I also believed that they  
11 had requested confidentiality that it  
12 not go beyond that point until they  
13 had concluded their investigation.  
14 They did not --- my understanding at  
15 the time is they were not asking us  
16 to assist them in an investigation  
17 simply to provide information. And  
18 ---.

19 BY ATTORNEY GUIDO:

20 Q. Well, that response --- your  
21 answer kind of brought me to another  
22 thing I wanted to ask you, but I want  
23 to make sure that I understand your  
24 responses to Mr. Bailey's question.  
25 You had just now mentioned that, you

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1 know, you believed that they had  
2 requested confidentiality and not go  
3 any further. In response to one of  
4 Mr. Bailey's questions, it seemed  
5 that you were saying that even if the  
6 FBI had not requested confidentiality  
7 and even if, you know, lots of other  
8 people knew in the State Police about  
9 this, that you still would have done  
10 the same thing; is that right?

11 A. No.

12 ATTORNEY BAILEY:

13 Sir, please, I'm sorry.  
14 I strong --- Counsel, you are  
15 mischaracterizing --- he put  
16 an add on in there. This is  
17 wrong to do this. You're  
18 abusing this witness' rights.

19 ATTORNEY GUIDO:

20 I'm not abusing  
21 anyone's rights.

22 ATTORNEY BAILEY:

23 You're characterizing  
24 his testimony and then you're  
25 also telling him what his

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1 response was.

2 ATTORNEY GUIDO:

3 Well then, he can  
4 correct me if I'm wrong, but  
5 your objection is on the  
6 record and I'd like a  
7 response.

8 ATTORNEY BAILEY:

9 Well, he's your client  
10 you told us.

11 ATTORNEY GUIDO:

12 I'd like a response.

13 ATTORNEY BAILEY:

14 I don't believe that  
15 was his response. I very  
16 strongly object to what you're  
17 doing. Thank you.

18 BY ATTORNEY GUIDO:

19 Q. What I'm asking --- do you  
20 understand where I'm going?

21 A. No. I'm lost now, so ---.

22 Q. Okay. So let me start over.

23 A. Bring it back.

24 Q. My understanding.

25 A. And one question at a time.

1 Q. Right. My understanding of  
2 what you said, and that's where I'm  
3 trying to clarify to make sure I  
4 understood what you said. Mr.  
5 Bailey, as I understood it, was  
6 asking you --- in other words, first  
7 you had said that it was your  
8 understanding the FBI had requested  
9 confidentiality?

10 A. Correct.

11 Q. And the way I understood Mr.  
12 Bailey's question, which the record  
13 will speak for itself later, but the  
14 way I understood his question was,  
15 but even if they hadn't, wouldn't it  
16 have still been the same, to which I  
17 believe you said ---.

18 A. Let me answer that one. If  
19 they had not requested  
20 confidentiality and yet all of the  
21 other information that Captain Ober  
22 had brought to me was it, that's all  
23 I've got, then my answer would have  
24 been the same, that in light of the  
25 fact that they were investigating a

1       public corruption case in Western  
2       Pennsylvania, in light of the fact  
3       that this was their investigation and  
4       they had not asked us for assistance,  
5       in light of the fact that they the  
6       term colonel had been used, I would  
7       have said, we need to maintain  
8       confidentiality here, we need to look  
9       out for the integrity of the  
10      Pennsylvania State Police so tell no  
11      one about this. Now, the next  
12      question, please.

13      Q.       Now, if you want to add --- if  
14      we add in the factor, because that's  
15      where I was talking about, ---

16      A.       Correct.

17      Q.       --- if you were taking this  
18      into consideration also, if you add  
19      in the factors that the FBI had  
20      already contacted other members of  
21      the State Police about the  
22      investigation and sought bear input  
23      advice, et cetera, about it, would  
24      that make a difference?

25      A.       I think that changes the

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1 equation. Clearly, if the FBI --- if  
2 you have that information, you can go  
3 back to the FBI and say, who all did  
4 you tell? And once from the source  
5 you find out that they have told X, Y  
6 and Z, I think that at that point you  
7 say, well, this information is out in  
8 the private domain, in the agency  
9 domain, and I can't control who does  
10 or doesn't say anything about it. I  
11 mean, the way you keep a secret is  
12 tell no one.

13 Q. Right.

14 A. Hence --- and that drove my  
15 decision at the time. But if a lot  
16 of people know, then you're not going  
17 to be able to keep a secret and that  
18 certainly would have influenced the  
19 decision that if I was aware at the  
20 time that this had been out there.

21 Q. Okay. That's probably what I  
22 was confused about. Now, do you know  
23 whether or not Captain Ober made any  
24 effort to find out from the FBI  
25 whether other people in the State

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1 Police had this information?

2 A. I don't know.

3 Q. And he didn't say anything to  
4 you about that?

5 A. No.

6 Q. And in response --- Mr. Bailey  
7 was asking some questions about  
8 whether or not you knew anything  
9 about Captain Ober being read his  
10 rights during the investigation.  
11 Just to clarify that, it's not  
12 unusual to give a member of the State  
13 Police their administrative warnings  
14 when they're interviewing; is it?

15 A. I don't know.

16 Q. As opposed to Miranda.

17 A. Yeah, as opposed to Miranda,  
18 I'm not sure that there's a  
19 consistent policy or not on whether  
20 you do or don't. I've been out of  
21 BPR for far too long to have any  
22 specific recollection of that, nor do  
23 I know what their current practices  
24 are. But the administrative  
25 warnings, part and parcel, if you

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1 know --- I mean, tell me if this is  
2 correct, don't they, as part of the  
3 administrative warning, don't you  
4 actually tell the member of the State  
5 Police that anything they say won't  
6 be used against them in a criminal  
7 proceeding?

8 A. My recollection is that an  
9 administrative warning is based on  
10 the Garrity decision that bifurcates  
11 the criminal and the administrative  
12 process. And so the Garrity decision  
13 said if you get that warning you're  
14 warned that you must tell the truth  
15 or suffer the consequences of losing  
16 your job, but what you say can't be  
17 used against you criminally.

18 Q. And I don't remember if you  
19 said this in response to Mr. Bailey's  
20 question, but if the --- I don't  
21 remember whether you said that  
22 Captain Ober was or was not aware of  
23 the fact that the FBI investigation  
24 actually dated back to May 1994 and  
25 1995.

1 A. I have no knowledge of that.

2 Q. Okay. So you did mention  
3 something about that later, so I  
4 wasn't sure what you were saying.

5 A. He did indicate to me that  
6 they had been investigating a public  
7 corruption and that this had come up  
8 and that they had allowed it to lie  
9 dormant until they had finished the  
10 larger segment and then they were  
11 tying up loose ends, but I don't have  
12 any knowledge of what date this all  
13 was occurring.

14 Q. Now, if there had been any  
15 truth to this, which fortunately it  
16 turned out that nobody was doing it,  
17 if there had been any truth in the  
18 allegations dated all the way back to  
19 1994 and 1995, then of all of the  
20 command staff you would be the only  
21 person that could have been involved  
22 at the command level previously when  
23 it first started.

24 A. Correct. I would be one of  
25 the two people left employed in the

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1 Department that would have been a  
2 lieutenant colonel at that time.  
3 Major Robert Einsel is the Director  
4 of Bureau of Training and Education  
5 and he was also a lieutenant colonel  
6 in that administration.

7 Q. But as far as the lieutenant  
8 colonels and Colonel Evanko, who were  
9 in place at the time this information  
10 came up, none of them could have been  
11 involved as a lieutenant colonel back  
12 in '94, '95?

13 A. '94, correct. '95, no. I  
14 believe they came into office in  
15 February of 1995.

16 Q. Okay. So later in '95 they  
17 would have?

18 A. After February, yes.

19 Q. Okay. And then I want to add  
20 one more thing. And that is, this is  
21 in follow up to something Mr. Bailey  
22 was asking you about the different  
23 people I had asked you about. I just  
24 wanted to clarify. Was Colonel  
25 Evanko the first person that you told

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1 about the FBI investigation?

2 A. I believe I informed Ms.

3 Woolley ever so briefly before the  
4 Commissioner, a matter of days.

5 Q. Okay. A matter of days, would  
6 that be ---?

7 A. Same time frame.

8 Q. One, two, weeks, days, do you  
9 know?

10 A. No.

11 Q. Would it be less than a week?

12 A. I would say a week or less  
13 and, again, it was the May time  
14 frame.

15 ATTORNEY GUIDO:

16 One second. I think  
17 that might be it. Okay.

18 That's all I have.

19 RE-EXAMINATION

20 BY ATTORNEY BAILEY:

21 Q. What conceivable or possible  
22 advantage could Captain Ober have  
23 gleaned as you looked back on this if  
24 he had purposely not informed Colonel  
25 Evanko. I mean, what did he possibly

1 gain?

2 A. I don't --- I've never been  
3 able to rationalize that there would  
4 be any advantage to that.

5 Q. And what about yourself, what  
6 possible advantage could you ever  
7 have gained from withholding  
8 something that you knew would come to  
9 his attention eventually?

10 A. No advantage at all.

11 Q. Is it fair to say that there's  
12 even some trepidation that attaches  
13 to having this information and not  
14 wanting to have a responsibility of  
15 holding it goes to the breast, so to  
16 speak?

17 A. That would be a correct  
18 assessment.

19 Q. But there was absolutely no  
20 intention known to you, no intention  
21 on your part, no intention in Captain  
22 Ober's part to hurt or injure the  
23 Commissioner or the front office in  
24 any way?

25 A. Well, there was no attention

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1 on my part. I can't fathom a motive  
2 that Captain Ober would have. I  
3 can't speak for him.

4 Q. Have you ever been between a  
5 rock and a hard place, Colonel?

6 A. Many times.

7 Q. And no matter what you do,  
8 there's no way to win. Let me ask  
9 you this. Do you think Colonel  
10 Evanko would have been happy if  
11 Captain Ober had gone and revealed  
12 this investigation?

13 A. I don't know whether he would  
14 be happy or not.

15 Q. Is it your view that Captain  
16 Ober and indeed yourself, because he  
17 put in the soup when he told you, had  
18 at least some potential to be  
19 concerned about obstruction, if  
20 indeed you revealed this information  
21 and it turned out to be even an  
22 implication of complicity by someone  
23 in the front office?

24 A. That thought did cross my  
25 mind, yes.

1 Q. Colonel Hickes, do you have a  
2 duty --- did you take an oath of  
3 office?

4 A. Yes, I did.

5 Q. Is your duty to the  
6 constitution in the law above your  
7 duty to the people and persons?

8 A. I'd have to look at the oath  
9 again I hear it often enough, but  
10 generally it's to the constitution  
11 and to the law.

12 Q. Is it fair to say that loyalty  
13 to the leader is secondary to loyalty  
14 to the law and your ethical  
15 responsibilities?

16 A. I think that that's certainly  
17 how the oath reads. I don't believe  
18 that the oath puts the attributes of  
19 values into that.

20 Q. All right. Now, when Colonel  
21 Coury testified he talked about a  
22 culture. I think he had indicated  
23 that he would have gone to Colonel  
24 Evanko because there's a culture. I  
25 think us out here in the private

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1 sector we call it the blue line, so  
2 to speak. The press calls it the  
3 blue line. Is there a culture in the  
4 Pennsylvania State Police to  
5 disregard the law if necessary and  
6 display loyalty to your leaders above  
7 your ethical and legal  
8 responsibilities?

ATTORNEY CHRISTIE:

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1           things that Colonel Coury said  
2           that one --- with  
3           investigative and field  
4           experience we do to further  
5           pursue this matter. But  
6           again, I don't wish to prod in  
7           the question, but I do object  
8           to you prodding the question  
9           based upon what I do not  
10          recall being in Colonel  
11          Coury's deposition testimony.

12           ATTORNEY BAILEY:

13           Well, and as a  
14          courteously to you, I'll  
15          withdraw the question and ask  
16          it this way.

17           BY ATTORNEY BAILEY:

18       Q.       Do you know if Captain Ober  
19          violated a culture? See, I had asked  
20          Colonel Coury what Captain Ober did  
21          wrong. He said he didn't know of any  
22          regulation. I'm sure he's not going  
23          to disagree with me about that, or a  
24          law Captain Ober broke. But he  
25          violated a culture of the State

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1 Police. Well, let me ask you, if you  
2 know, whether Captain Ober violated a  
3 culture, quote, unquote, culture of  
4 the Pennsylvania State Police?

5 ATTORNEY CHRISTIE:

6 Is that the same  
7 question you've just  
8 withdrawn, Counsel.

9 ATTORNEY BAILEY:

10 No, it's very  
11 different.

12 ATTORNEY CHRISTIE:

13 You just asked it  
14 again.

15 ATTORNEY BAILEY:

16 No, no. It's very  
17 different.

18 ATTORNEY CHRISTIE:

19 Well, my objection does  
20 stand, I guess, as to the form  
21 of the repeated question for  
22 the reason that I stated  
23 earlier, but I don't want to  
24 repeat it.

25 ATTORNEY BAILEY:

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1                   Well, I don't want to  
2                   keep this all you hear and  
3                   waste anybody's time, but I  
4                   don't think I repeated the  
5                   question at all. I'm going to  
6                   ask very simply, I think we've  
7                   been able to established in  
8                   this deposition, I think  
9                   anybody would be foolish to  
10                  disagree, there have been no  
11                  violation of regulation or law  
12                  by Captain Ober.

13                  BY ATTORNEY BAILEY:

14                  Q.         My question is, and I pointed  
15                  to Mr. Coury, my question is, did  
16                  Captain Ober violate a culture, a  
17                  value of the culture, of the  
18                  Pennsylvania State Police in what he  
19                  did and did you? That's going to be  
20                  my next question.

21                  A.         Not that I'm aware of to both.

22                  ATTORNEY CHRISTIE:

23                  Just one thing I'd like  
24                  to put on the record with  
25                  respect to your last question,

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1 just to say that, you know,  
2 when you said nobody in the  
3 room thinks that Captain Ober  
4 violated any regulation of the  
5 State Police, that's not the  
6 Defendant's position. The  
7 Defendant's position is that  
8 he did violate regulations of  
9 the State Police. So I just  
10 want to clear about any  
11 implication there.

12 A. Yeah. My response to the  
13 question was based on the culture  
14 loyalty as opposed to anything else.

15 BY ATTORNEY BAILEY:

16 Q. Well, let me ask about  
17 anything else then. You shouldn't  
18 have said it. I might not have  
19 remembered the question, but you did  
20 so what regulation did he violate?

21 A. I don't know that he did.

22 Q. What law did he violate?

23 A. I don't know.

24 Q. If he violated a regulation,  
25 should he have been punished for it,

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1 should he have been disciplined for  
2 it? Strike that.

3 If you violate a regulation,  
4 should he at least be counseled or  
5 disciplined for it?

6 A. Generally speaking, that is  
7 one recourse that he can take. There  
8 are --- that's a recourse.

9 Q. Well, you could ignore it;  
10 couldn't you?

11 A. Sure.

12 Q. Of course. Now, if a trooper  
13 violates the criminal laws of the  
14 Commonwealth, does Pennsylvania State  
15 Police have a duty and responsibility  
16 to the state and to our citizens to  
17 investigate and prosecute that  
18 misconduct?

19 A. I would say we have a duty to  
20 investigate and present to the  
21 district attorney for prosecutorial  
22 decision. I would agree to that.

23 Q. Your correction is well  
24 stated. It would be to investigate  
25 and provide information to a proper

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1 prosecutorial authority to deal with;  
2 right?

3 A. Correct.

4 Q. How do you spell Stanton's  
5 name?

6 A. I believe it's S-T-A-N-T-O-N,  
7 but I'm not positive.

8 Q. Okay. Do you remember this  
9 question on page six, the interview  
10 of Lieutenant Colonel Robert Hickes  
11 on July 2nd, 1999. Hickes, ask that  
12 again, please. Williams, sure. At  
13 any conversation you'd had with  
14 Commissioner Evanko, did either you  
15 or Captain Ober ever tell him that  
16 the allegations of influence were not  
17 specific as to a colonel in the PSP  
18 or someone in the governor's office,  
19 but rather the trooper claimed to  
20 have contacts with high-ranking  
21 officials in the agency and the  
22 administration?

23 Do you remember that question?

24 A. Not specifically, but yeah.

25 Q. Did that question seem to say

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1 that these two fine majors who did  
2 this fine investigation learned that,  
3 in fact, there were some allegations  
4 against higher ups in the agency and  
5 higher ups in the Governor's office?  
6 Is that the way you took that?

7 A. I'd have to read that again,  
8 but ---.

9 Q. It speaks for itself. It  
10 certainly does.

11 ATTORNEY BAILEY:

12 And I don't have any  
13 additional questions for you,  
14 sir. And I would like to  
15 express, on my part and my  
16 client's part, a gratitude for  
17 you coming here today and  
18 answering questions. Thank  
19 you.

20 ATTORNEY GUIDO:

21 That's all I have.

22 ATTORNEY BAILEY:

23 Okay. Sir, until they  
24 shut it down.

25 VIDEOGRAPHER:

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1                   12 : 52 p.m., this  
2                   deposition is concluded.

3                   \* \* \* \* \*

4                   VIDEOTAPED DEPOSITION CONCLUDED AT  
5                   12 : 52 P.M.

6                   \* \* \* \* \*

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CAMBRIA )

3 C E R T I F I C A T E

4 I, Melissa L. Charlton, a Notary Public in and  
5 for the Commonwealth of Pennsylvania, do hereby  
6 certify:

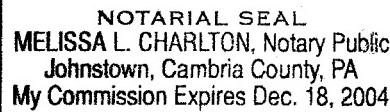
7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 24<sup>th</sup> day of April 2002.

23  
24  
25  
*Melissa L. Charlton*



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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE

DATE: May 18, 1999

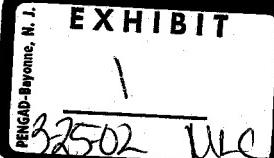
SUBJECT: FBI Investigation

TO: Commissioner

FROM: Lt. Colonel Robert C. Hickes *RCH*  
Deputy Commissioner of Staff

1. This correspondence is submitted in response to your request of May 13, 1999, for information concerning what was known of the FBI investigation relative to political corruption.
2. During my first week as Deputy Commissioner of Staff, I believe Monday, October 5, 1998, Captain Darrell Ober, Director, Internal Affairs Division, contacted me and asked to speak to me in confidence. Captain Ober advised that while he was Acting Director of the Bureau of Professional Responsibility he was contacted by the Federal Bureau of Investigation, Pittsburgh Office, relative to a political corruption case that they were investigating. The FBI provided the following information to Captain Ober:
  - a. An informant was approached to facilitate buying a candidate's position as a State Police Cadet. This was supposedly a common practice and had been done numerous times in the past.
  - b. Buying a position with the Pennsylvania State Police allegedly was facilitated by political official(s), someone in the Governor's Office, and someone of high rank in the State Police. The term Colonel was used.
  - c. Money was to be paid to move from Band B to Band A and also to progress through each aspect of the hiring process, i.e., polygraph, physical test, background, etc.
  - d. This investigation was furthered by wiretap information.
  - e. The Pennsylvania State Police aspect of the FBI investigation was a minor component in a larger political corruption investigation and had been known for some time.

EXHIBIT



FBI Investigation

May 18, 1999

Page 2

3. Captain Ober advised that the FBI had requested absolute confidentiality. Captain Ober stated that he told the FBI that he had to advise at least one other person. Upon my promotion, Captain Ober determined that he would advise me, since I had not been a Colonel at the time of the allegation. Based upon the information provided by Captain Ober, I ordered him as follows:
  - a. Disclose the information to no one else.
  - b. Cooperate with the FBI as requested according to PSP regulations and the law.
  - c. Advise me periodically of progress.
4. Over the next five months, I talked to Captain Ober two or three times at his initiation, and he advised that no progress had been made. In mid to late March, 1999, Captain Ober advised that a Trooper Stanton, Troop B, had facilitated a meeting between the prospective candidate and the informant and an amount of money (I believe \$1,000) was exchanged. The FBI was to attempt to link the bribe to a member of the Pennsylvania House of Representatives from Pittsburgh, Pennsylvania.
5. At the end of April, early May, Captain Ober advised that the Representative didn't do anything illegal. The Representative talked about helping the candidate become a PCO or "PLCB Officer," but not a Trooper. Captain Ober informed me that we were released from the confidentiality pledge.
6. You were advised by both Captain Ober and myself on Wednesday, May 12, 1999. You were not advised sooner due to your unavailability.